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UNITED STATES DISTRICT COURT

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DISTRICT OF NEW JERSEY

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N.V.E. INC.,

5

Plaintiff,

6

vs.

No. 06-5455 (ES) (SCM)

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JESUS J. PALMERONI, aka

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JOSEPH PALMERONI, et al,

9

Defendants.

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X

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JESUS J. PALMERONI,

12

Third-Party Plaintiff,

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vs.

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ROBERT OCCHIFINTO and WALTER

15

ORCUTT,

16

Third-Party Defendants.

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X

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19

DEPOSITION OF VINCENT J. ROSARBO

20

Hackensack, New Jersey

21

December 11, 2015

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Reported by:

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MARY F. BOWMAN, RPR, CRR

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JOB NO. 100718

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December 11, 2015

10:20 a.m.

Deposition of VINCENT J. ROSARBO,
held at the offices of Pashman Stein, LLP,
21 Main Street, Hackensack, New Jersey,
before Mary F. Bowman, a Registered
Professional Reporter, Certified Realtime
Reporter, and Notary Public of the State of
New Jersey.

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APPEARANCES:

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PASHMAN STEIN

4

Attorneys for Plaintiff

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21 Main Street

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Hackensack, NJ 07601

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BY: AIDAN O'CONNOR, ESQ.

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ELEANOR LIPSKY, ESQ.

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THE BASIL LAW GROUP

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Attorneys for Defendant Occhifinto

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1270 Broadway

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New York, NY 10001

14

BY: ROBERT BASIL, ESQ.

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LAW OFFICES OF ROBERT A. VORT

17

Attorney for Defendant Palmeroni

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2 University Plaza

19

Hackensack, NJ 07601

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BY: ROBERT VORT, ESQ.

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23

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25

1 Rosarbo

2 VINCENT J. ROSARBO,

3 called as a witness by the parties,

4 having been duly sworn, testified as

5 follows:

6 EXAMINATION BY

7 MR. O'CONNOR:

8 Q. Good morning, Mr. Rosarbo.

9 A. Good morning.

10 Q. As you know, I am Aidan O'Connor,
11 I am an attorney at Pashman Stein. I
12 represent N.V.E. and Robert Occhifinto.

13 A. We have met before.

14 Q. Yes. And you know Mr. Jensen
15 sitting to my left?

16 A. Yes.

17 Q. And we have met before?

18 A. Yes.

19 Q. And Ms. Lipsky, or at least spoke
20 with her on the phone?

21 A. That's correct.

22 Q. You don't have a lawyer here
23 today.

24 A. Correct.

25 Q. You have had an attorney

1 Rosarbo

2 previously in this lawsuit, is that
3 correct?

4 A. Yes.

5 Q. You understand that you are
6 entitled to have a lawyer if you so choose
7 during this deposition?

8 A. Yes.

9 Q. You have chosen to go forward
10 without a lawyer today?

11 A. Yes.

12 Q. You know the court reporter just
13 swore you in and this is considered a
14 formal court proceeding. So if you lie or
15 don't tell the truth, that would be
16 considered perjury. Do you understand
17 that?

18 A. Yes.

19 ~~Q. As we talked just before we got~~
20 ~~started, the court reporter is taking~~
21 ~~everything down. I need you to actually~~
22 ~~give me a verbal response to all your~~
23 ~~answers; yes, no whatever it is. Although,~~
24 ~~we normally shake our heads or nod for~~
25 ~~these purposes, I need you to say yes or~~

1 Rosarbo

2 pending. You have to answer the question
3 first and then you can get a break and do
4 what we need to do. OK?

5 A. Yes.

6 Q. In getting ready for today's
7 deposition, did you review any documents?

8 A. No.

9 Q. Did you talk to your wife or
10 daughter about what was going to happen
11 here at the deposition?

12 A. Just my wife.

13 Q. Did you talk about the facts of
14 what happened back with N.V.E. or just the
15 fact that you were going to a deposition?

16 A. Just the fact that I was going to
17 a deposition.

18 Q. Have you spoken with any other
19 defendants, Mr. Palmeroni or any other
20 folks in this lawsuit about this
21 deposition?

22 A. About this deposition?

23 Q. About this deposition?

24 A. No.

25 Q. When was the last time you spoke

1 Rosarbo

2 to Mr. Palmeroni?

3 A. Three, four, five years ago.
4 Just before or right at the time that I had
5 an attorney, Mr. Dratch.

6 Q. Dratch is D-R-A-T-C-H?

7 A. Correct.

8 Q. And what was the nature of your
9 discussion with Mr. Palmeroni at that time?

10 A. It was when I went to meet him,
11 it was about this case. And he had a piece
12 of paper that I had to read, and he wanted
13 us to pat each other down.

14 Q. Who had a piece of paper?

15 A. He did.

16 Q. I am sorry, I know you're
17 pointing to Mr. Palmeroni --

18 A. I'm sorry, Joe Palmeroni.

19 Q. So you understand, sometimes
20 pronouns just get confusing when there is a
21 lot of folks. You are talking about
22 Mr. Palmeroni?

23 A. Yes.

24 Q. Mr. Palmeroni had a piece of
25 paper?

1 Rosarbo

2 A. Yes, and it stated we should pat
3 each other down and then go forward and
4 talk. So we did that.

5 Q. What was --

6 A. I didn't understand that, but
7 that's what we did.

8 Q. What was your understanding as to
9 why he wanted to pat you down?

10 A. I guess he didn't trust me, I
11 don't know.

12 Q. Trust you for what?

13 A. I'm not sure, I don't know.

14 Q. Do you think he was looking for a
15 recording device?

16 A. Yes.

17 Q. Is that your understanding at the
18 time?

19 A. Yes -- no. It was my
20 understanding -- yeah, once I got it, I
21 seen it, yeah, that was my understanding,
22 yes.

23 Q. At the time of the conversation?

24 A. Yes.

25 Q. Was your understanding at the

1 Rosarbo

2 time that Mr. Palmeroni asked if he could
3 pat you down that he was looking for a
4 recording device?

5 A. On both sides. In other words,
6 he wanted to feel comfortable that I wasn't
7 recording him. I didn't even have that
8 notion in my head, as far as I was
9 concerned, as far as me patting him down.
10 He wanted to talk to me, OK, we'll talk.

11 Q. And what was your understanding
12 as to why there was a concern about the
13 conversation being recorded?

14 A. Well, that was his concern. It
15 wasn't my concern. I wasn't -- the case
16 wasn't going on for -- I don't know how
17 many years before that and I guess it was a
18 paranoid concern on his part. I mean he
19 requested the meeting. I didn't. So I'm
20 not sure where he was going with that.

21 Q. Did Mr. Palmeroni say anything to
22 you about not wanting to have the meeting
23 recorded?

24 A. No.

25 Q. Mr. Rosarbo, to the best of your

1 Rosarbo

2 memory, was this meeting before or after
3 when you were named in this lawsuit?

4 A. It was kind of like right around
5 that same time.

6 Q. You don't know whether it was
7 before or after though?

8 A. No, I -- no. I can't remember
9 that, no.

10 Q. Did Mr. Palmeroni, in fact, pat
11 you down?

12 A. Yes.

13 Q. Did you pat him down?

14 A. Yes.

15 Q. And then did you have a
16 conversation?

17 A. Yes.

18 Q. And what was the nature of that
19 conversation?

20 A. The nature of the conversation
21 was that I have a daughter who has already
22 been through college and who is not going
23 to be affected by this. He more or less
24 wanted me to take the fall. He was more or
25 less telling me I should take the whole

Rosarbo

fall in this.

My response to him was Joe, everything is out in the open. There are certain things that are going to be said. We did this 50/50, I'm not going down by myself. I'm sorry. I can't do that.

And he also wanted to at that time maybe he was having a problem with his attorney, he wanted to piggyback with my attorney to go forward on a go-forward basis. And that was the basis of the conversation.

I told him I wasn't going to do that. You know, you got your case, the case started with you. I'm being dragged into it. So I have to fight my own battle. But it's not going to be that I'm going to be left holding the bag. That's not going to happen.

When I went back -- that was the last I talked to him and then I told my attorney at that time that I -- I didn't want to have anything to do with him at that time because I seen where he was going

1 Rosarbo

2 and at that time, I didn't trust him.

3 Q. What did you understand by you
4 were not going to take the fall for this?

5 A. He was more or less telling me
6 that he had, you know, a baby, 4-year-old,
7 whatever, that my daughter was already
8 through college. I wouldn't get hurt by it
9 like he was going to get hurt by it. So he
10 more or less wanted me to swallow the whole
11 nine yards.

12 Q. This is with regard to the N.V.E.
13 claims against you and Mr. Palmeroni?

14 A. Correct.

15 Q. Did you tell Mr. Palmeroni that
16 you were not going to get left holding the
17 bag?

18 A. Yes, I did.

19 Q. What was Mr. Palmeroni's
20 response?

21 A. He didn't respond. But he knew
22 where I was coming from. But he still
23 wanted me to talk to my attorney and see if
24 he can piggyback his way into it.

25 How it even happened was I was

1 Rosarbo

2 told that there was a motion that was going
3 to be passed, that was going to open up
4 Smart World and American Wholesale
5 information and he told me I should get an
6 attorney to try and delay that.

7 But I said, Joe, the case is
8 about you. It is not about me. Why do I
9 even have to get involved. And he said he
10 ran out of motions, that he couldn't do
11 that and I shouldn't have done it, but I
12 did. He was a corporate officer on both of
13 them. He could have stopped that motion
14 easily.

15 My knowledge now is that he
16 wanted me in the case, so this way here,
17 there is another person. I mean, after I
18 met him and then he told me what he wanted
19 me to do -- my knowledge to that fact is
20 that he wanted me in the case and to do
21 this, this way here, Bob would focus on me
22 and I would take the fall. That's how it
23 looks to me now.

24 Q. Is that about the time that you
25 filed a motion through your lawyer to quash

1 Rosarbo

2 a subpoena for bank records?

3 A. Yes.

4 Q. Do you recall that being around
5 August of 2010?

6 A. Yes. I mean, I don't know the
7 exact day, but I'll say yes to that.

8 Q. Do you recall signing a
9 declaration that your lawyer might have
10 prepared with regard to trying to quash a
11 subpoena for bank records for American
12 Wholesale Distributors and VAR?

13 A. No, I don't.

14 Q. Mr. Rosarbo, have you had
15 discussions with any other defendants who
16 have been named in this case?

17 A. No.

18 Q. Ms. Hooey, Mr. Sumicek?

19 A. No.

20 Q. Mr. Housholder, the Portzes?

21 A. None of them.

22 Q. Mr. Rosarbo, where do you
23 currently live?

24 A. 23 Thistle Meadow Lane, Branford,
25 Connecticut.

1 Rosarbo

2 A. Yes. And I used to call him
3 quite a few times and I more or less
4 explained my situation, you know, and he is
5 already there, he is selling stuff. I don't
6 know what I am supposed to be doing in
7 Connecticut.

8 So how it unfolded was that I
9 started going up there on a regular basis.

10 Q. To Sparta?

11 A. Yes. And that's when things kind
12 of like changed for me because I was on
13 hands now. And I started to see, you know,
14 how things were going on. I mean, I did it
15 back and forth for a while and it was like
16 killing me.

17 Q. Let me stop you for a second.

18 A. Go ahead.

19 Q. So at the time that you started
20 working at N.V.E., what did you understand
21 Mr. Palmeroni's role or title to be?

22 A. He was a salesman.

23 Q. A salesman?

24 A. Yes.

25 Q. What did you understand

1 Rosarbo

2 Mr. Sellar's role to be?

3 A. Same thing, salesman.

4 Q. And who told you Mr. Palmeroni
5 would be your contact?

6 A. Well, actually nobody. I just
7 called him. I mean, I had information on
8 the sales people. There was Bob Sellar, a
9 kid name Jeff. They were kind of like cold
10 to me, whereas at least with Joe, I got to
11 talk to him and that's how we kind of
12 started a rapport.

13 Q. And you started coming down to
14 the office in Sparta to work?

15 A. Yes, correct.

16 Q. And to do what?

17 A. Now I started seeing how things
18 operated, make cold calls, anything that
19 had to do with anything. In the beginning,
20 it was try to sell product. As it grew, I
21 did a whole number of things. But in the
22 beginning it was to try to sell product.
23 Call people up, chains, individual
24 mom-and-pops. You know, anything to sell.

25 Q. Do you recall what your starting

1 Rosarbo

2 salary was going to be at N.V.E.?

3 A. Yeah. I believe it was 50,000.

4 Q. 50,000 dollars per year?

5 A. Yes. Correct.

6 Q. Was there a bonus or commission
7 on top of that?

8 A. No, not in the beginning. As we
9 grew, it changed, but no.

10 Q. How did it change?

11 A. As we started selling more, our
12 salaries went up and then he started giving
13 out bonuses on Christmas time.

14 Q. How big would the bonus be?

15 A. That depended on the year
16 naturally.

17 Q. I am sorry, go ahead?

18 A. I'm going to guess and say
19 anywhere from \$50 to \$100,000, depending on
20 the year.

21 Q. Did that go up as you worked
22 there?

23 A. Yes.

24 Q. So first year --

25 A. And my salary too.

1 Rosarbo

2 Q. Let's do one at a time. Can you
3 remember today what your bonus was each
4 year? You were only there about three
5 years.

6 A. Yeah, OK. I'm going to say 25 to
7 50 and then \$100,000.

8 Q. 25, and then 50, and then 100,000
9 dollars?

10 A. Yes.

11 Q. And your salary went up from
12 50,000 dollars?

13 A. To maxed at 125. He'll know
14 better than I would. But that's --

15 Q. OK. Could it have been as much
16 as 150 at the time you left?

17 A. Yes, it could have. I mean, if
18 that's what he has, then that's what it
19 was. Because it was all on paper. I mean,
20 I might even be off on the bonuses.
21 They'll know better than I will.

22 ~~MR. VORT: Can we take a short~~
23 ~~break, so I can go out in the hall?~~

24 ~~MR. O'CONNOR: Yes.~~

25 (Recess)

1 Rosarbo

2 Q. You were hired to do sales for
3 N.V.E., is that correct?

4 A. Yes.

5 Q. Do you have any direct or
6 individual accounts that you serviced?

7 A. I don't remember to be honest
8 with you. I'm sure I had some, but they
9 were minimum, very small. I was a part of
10 the support team and I helped -- I just
11 wasn't a salesman. I worked in shipping.
12 I drove a truck. I worked in receiving. I
13 did trade shows. I set the shows up, sold
14 product, broke it down. There was quite a
15 few things that I did.

16 Q. Right. That's what I'm trying to
17 get to.

18 A. Yes.

19 Q. You would go to trade shows and
20 set up the shows?

21 A. Yes, I would be actually the
22 first one there, set it up. And then other
23 people who were involved would come in. We
24 would have a stand and stuff and do our
25 thing, two, three, four days, whatever it

1 Rosarbo

2 was, and then last one out. Because I
3 would have to break it down and then send
4 it back.

5 Q. You talked about how during the
6 time you were there, which is roughly,
7 2000, 2001 to 2003, 2004, you received
8 bonuses, is that correct?

9 A. Yes.

10 Q. Are you aware if other employees
11 received bonuses?

12 A. Yeah, there were all envelopes
13 there. We were told not to say, or not
14 told it was in our envelopes. So nobody --
15 I mean, this is the first time I'm talking
16 about it. That's why when you get it,
17 you'll see what actually the figures were.

18 But we were told, printed or
19 typed in there not to talk about it. For
20 whatever. People get hard feelings, how
21 come he got more than me? I respected all
22 that. There were bonuses for a lot of
23 people.

24 Q. That's what I am trying to get
25 to. All the sales folks got bonuses?

1 Rosarbo

2 A. Yeah, not just the salespeople.

3 Q. Who else, everybody?

4 A. That, I don't know. I know all
5 the salespeople did because I was with the
6 salespeople. The other departments, you
7 would have to get together with them. I'm
8 sure some people in other departments got
9 some. Who was in charge of manufacturing,
10 who was in charge of shipping. That's my
11 guess on it.

12 Q. Did you know if the staff got
13 bonuses?

14 A. What do you mean by the staff?

15 Q. The secretaries, the assistants?

16 A. Yes, I would say they got them
17 too. Yes.

18 Q. And did the folks in
19 manufacturing get bonuses?

20 A. That, I don't know. Maybe the
21 people who were in charge of manufacturing.
22 But the actual workers, I don't know.

23 Q. You just don't know?

24 A. No, I don't know.

25 Q. When you started at N.V.E. you

1 Rosarbo

2 said you were home for a couple months and
3 then started going to Sparta for work, is
4 that correct?

5 A. Yes, might have been longer than
6 a couple of months, but maybe three,
7 four --

8 Q. OK.

9 A. But yes, yes.

10 Q. To your knowledge, who were you
11 supposed to report to during the first year
12 you were at N.V.E.?

13 A. Well, it -- Joe.

14 Q. Anybody else?

15 A. No. Bob Sellar was there, Jeff
16 was there. It seemed like me and Joe had a
17 rapport, so that's who I talked to.

18 Q. Did you report to Bob Occhifinto?

19 A. No, no.

20 Q. Not directly?

21 A. No, because sometimes he wasn't
22 there. No, I reported to Joe.

23 Q. When you say sometimes he wasn't
24 there, during that first year or two when
25 you were working at N.V.E., how often would

1 Rosarbo

2 you say Mr. Occhifinto was there either at
3 the office or the plant?

4 A. I don't know, he was bouncing
5 around. There was a lot of things going
6 on. He was building stuff, going down
7 south. You want actual days? I really
8 don't even know because his office at that
9 time, his office was on the other side of
10 the building to where I was working. So he
11 might have even came in and left. I don't
12 even know it.

13 Q. You wouldn't know it?

14 A. No.

15 Q. But you do know he was traveling
16 during a lot of the time you were there?

17 A. Yes, yes. I mean, he -- he
18 always traveled. He did -- he was -- he
19 did -- he moved around a lot.

20 Q. What I am going to do,
21 Mr. Rosarbo, I'm going to show you a
22 document. I'm not going to mark it as an
23 exhibit. I want to see if it helps refresh
24 your recollection.

25

1 Rosarbo

2 MR. O'CONNOR: What I am going to
3 show Mr. Vort, too now. I'm going to
4 show Mr. Rosarbo a letter dated
5 August 10, 2004, Bates stamped
6 N.V.E.-004311-B.

7 MR. VORT: 1824. I have it here.

8 MR. O'CONNOR: Just take a look
9 at this page if you would, please.

10 MR. VORT: That was the Bates
11 stamp number in the lower right.

12 A. So it was 150. OK.

13 Q. That's my question. Does looking
14 at that document refresh your recollection
15 as -- let me finish, let me finish.

16 Does looking at this document,
17 N.V.E.-004311B, does that refresh your
18 recollection as to what your salary was in
19 2004?

20 A. Yes.

21 Q. And how much was your salary?

22 A. \$150,000.

23 Q. And that's -- per year. Thank
24 you. You can give those back to me.

25 A. All right.

1 Rosarbo

2 one time, the Beach Boys came and they
3 actually poured sand to actually have that
4 scenario. Another one was in New Orleans.
5 In the Carrier Dome.

6 Q. At the time, up until the time
7 you left in 2004, what was the main product
8 that you were -- that N.V.E. was selling?

9 A. Stacker 2 and 3.

10 Q. What are Stacker 2 and 3?

11 A. They were Ephedra products,
12 stimulant -- dietary supplements and
13 stimulants.

14 Q. They came in little tablets or
15 pills generally?

16 A. They were capsules.

17 Q. What was the most popular of --

18 A. Stacker 2 was the most popular.

19 Q. Let me finish this and I will let
20 you finish.

21 What else I wanted to ask you,
22 the Stacker 2 came in different-sized
23 bottles?

24 A. Correct.

25 Q. Little plastic bottles?

1 Rosarbo

2 A. Yes.

3 Q. What was the most popular size
4 bottle that was being sold at the time?

5 A. 20-count bottles. But there was
6 also --

7 MR. VORT: Excuse me -- what?

8 THE WITNESS: 20-count bottles.

9 Q. A 100-count bottle?

10 A. Yes.

11 Q. And that was not as popular as
12 the 20-count?

13 A. No, because 100-count bottles had
14 to go into bigger areas. The 20-count
15 bottles went into the mom-and-pop stores.
16 They were a decent price. 100-count bottle
17 is pretty big to be committed to. Those
18 were going to GNCs, stuff like that where
19 people were going to take that product for
20 an extended period of time.

21 ~~20-count bottles went into~~
22 ~~mom-and-pop stores where people would buy~~
23 ~~just one bottle. There was also another~~
24 ~~product, Yellow Jacket, Black Beauty, all~~
25 ~~more or less the same thing, but each one~~

1

Rosarbo

2

went in the store and bought it, correct?

3

Q. Yeah.

4

A. That varied, anywhere from --

5

eight to ten dollars.

6

Q. And do you know what the

7

wholesale price was that N.V.E. was

8

offering it at?

9

A. Wholesale, \$2.75.

10

Q. Per bottle?

11

A. Correct. But that could have

12

varied because they were all suggested

13

retail prices. But we were always hearing

14

them people getting it for better prices,

15

but we didn't know how. I mean, I mean

16

people were making deals on their own. Bob

17

himself actually.

18

Q. OK.

19

A. But, I mean, who am I to question

20

what you got it for? I heard quite a few

21

things at the GNC trade show, what they

22

were -- they could have been lying, too,

23

don't get me wrong -- just to see if you

24

would go down in your price.

25

We had, we had our specific

1 Rosarbo

2 numbers and that's what we went off at.

3 Q. So people would try and get
4 better prices from you?

5 A. Yeah, of course, 100 percent.

6 MR. VORT: May I cut in for a
7 second. You used the phrase Bob
8 himself, what did you mean to --

9 MR. O'CONNOR: I am going to
10 object to that, Mr. Vort. You can do
11 that on your questioning.

12 Q. Did you call on any individual
13 customers?

14 A. Yes.

15 Q. Who would you call on?

16 A. You want me to remember that?
17 There were people all over the world I used
18 to call on. People up in the Michigan
19 area, people in the California area. I --
20 I don't have -- I don't recollect. I got
21 to meet most of the people through my
22 immediate supervisor and that was Joe.

23 Q. Mr. Palmeroni?

24 A. Yes.

25 Q. And would you, when you went to

1 Rosarbo

2 call on a customer, would you go with
3 Mr. Palmeroni?

4 A. No, not on a call itself. But as
5 far as any of the trade shows, any, you
6 know, things thereafter when he would meet
7 people, I would meet them because they
8 would come to the trade shows also.

9 Q. Did you ever call -- you said
10 California, did you ever call on Darren
11 Housholder at Brand New Energy?

12 A. Yes.

13 Q. You did?

14 A. Yes. I mean, he bought product
15 from me.

16 Q. What product was he buying from
17 you?

18 A. The 20-count bottles.

19 Q. Was that product while you were
20 still working at N.V.E. or after you left
21 N.V.E.?

22 A. Both. I mean, I believe he
23 bought the 100-counts too. But don't quote
24 me on it. He bought product.

25 Q. You were let go August 10, 2004

1 Rosarbo

2 by N.V.E., is that correct?

3 A. Yes.

4 Q. Who told you that you were being
5 let go?

6 A. Bob.

7 Q. What did Bob tell you?

8 A. That he couldn't afford my salary
9 and he had to let me go.

10 Q. Do you know, had the market,
11 anything in the market changed around that
12 time to --

13 A. He was -- I think it was more or
14 less -- we went through a scenario of
15 things started closing in because of the
16 Ephedra issue, lawsuits, stuff like that.
17 And he wanted to cut down on salaries.

18 So he more or less told me he was
19 going to cut my salary from 150 to 75. And
20 I guess we went back and forth with that.
21 But I thought everything was OK to be
22 honest with you. I mean, I definitely
23 would accept the cut. It is what it is. I
24 mean, I was -- I guess he seen I was a
25 little disgruntled with it, but it wouldn't

1 Rosarbo

2 affect my job or anything else. And then
3 about a month later or so, he had me go in
4 the office and he told me I had to go. And
5 I was -- actually, I was in shock to be
6 honest with you. That was it, I said I'm
7 sorry to hear that. I said why? He said,
8 because I can't afford you anymore. I
9 said, OK, so be it. I was let go with two
10 other people the same day.

11 Q. Who else was let go that day?

12 A. Bob Amilyon. And then there was
13 another Spanish kid who helped me,
14 actually, move the place from Sparta to
15 where we were. And I was kind of in shock
16 that he got let go also. But -- and that
17 was it.

18 Q. And the Spanish kid, his name was
19 Carlos, is that what you recall?

20 A. Yeah, that was -- exactly, yeah.

21 Q. When you say there were some
22 issues with Ephedra, at this point in time
23 back in 2004, were there some issues where
24 there was talk that Ephedra might be
25 banned?

1 Rosarbo

2 A. Yes, exactly. That whole
3 scenario was happening, things were being
4 put on TV, you know, people were getting
5 sick over it, so to speak.

6 Q. Did that affect the amount of
7 sales?

8 A. At that time, no. We didn't hit
9 that brunt, but it was foreseen that this
10 was going to be happening and we tried to
11 change over into energy drinks. He was
12 trying to make a candy bar. I don't know
13 if he ever did. We were trying to do other
14 things besides Ephedra products.

15 Q. And you got the three months
16 severance when you were let go by N.V.E.,
17 is that correct?

18 A. Whatever that says, yes.

19 Q. Does that sound right, three
20 months?

21 A. I think it says more in there.

22 Q. Do you want to look at it again?

23 A. Yes, whatever that was. That
24 might have been I got medical -- you got
25 it, same thing? Yeah, three months, 12

1 Rosarbo

2 weeks.

3 Q. OK.

4 A. And I was very disappointed by
5 it. But I left on good terms. I said
6 goodbye to everybody. I actually had tears
7 in my eyes, to be honest with you, but it
8 is what it is.

9 Q. Did Mr. Palmeroni know that you
10 had a conviction, a federal conviction?

11 A. Yes.

12 Q. How did he know that?

13 A. I told him. I mean, that's how
14 he knew how I met Bob.

15 Q. Because you met at FCI
16 Lewisburg --

17 A. Correct.

18 Q. -- in the camp?

19 Did Mr. Palmeroni also tell you
20 that he had a conviction?

21 A. Yes.

22 Q. Did he tell you what that
23 conviction was for?

24 A. No, he just told me the length of
25 the time. And I didn't push it.

1 Rosarbo

2 Q. Did it make much difference to
3 you at the time?

4 A. No, no, it didn't.

5 Q. Did it seem to make much
6 difference to him that you and Bob
7 Occhifinto have had convictions?

8 A. No, not at all.

9 Q. In your roles in sales for
10 N.V.E., you went to various conventions,
11 and trade shows and Nascar events where
12 there's an attempt to make sales or at
13 least talk to significant clients of N.V.E.
14 is that correct?

15 A. Yes.

16 Q. Are you also aware that N.V.E.
17 was not only selling product domestically,
18 but was exporting to Europe and other
19 places?

20 A. Yes.

21 Q. Were you aware at the time that
22 you were working for N.V.E. that the price
23 for the export goods was different than the
24 price for domestic goods?

25 A. Not in the beginning because I

1 Rosarbo

2 wasn't aware of it at all. As we moved
3 forward, I got aware of it, yes.

4 Q. So you learned that somewhere
5 during your time working for N.V.E.?

6 A. Correct, yes.

7 Q. And the price for the export
8 goods, was that lower or higher than the
9 domestic price?

10 A. Lower.

11 Q. Was it approximately half of the
12 domestic price?

13 A. That, I don't know. I have no
14 clue what that price was. I know it was
15 lower for whatever reasons because it had
16 to be exported. It had to go -- whatever.
17 At least that was the scenario as to why it
18 had to be cheaper.

19 MR. O'CONNOR: Can you read back
20 the answer.

21 (Record read)

22 Q. If you don't remember the exact
23 difference in price, do you know whether it
24 was a significant difference in price?

25 A. It had to be because after I got

1 Rosarbo

2 involved with it, it showed that there was
3 different price breaks and there were
4 different profit margins. But the exact
5 price, I really don't know.

6 Q. And the product that was being
7 exported, was it the same product as was
8 being sold domestically?

9 A. Yes.

10 Q. The Stacker 2 20-counts would be
11 the same as Stacker 2 20-counts sold here
12 in the United States?

13 A. Yes.

14 Q. And that's true for the 100-count
15 bottles too?

16 A. Yes.

17 Q. What about other products, Yellow
18 Jacket and Black Beauty?

19 A. Yes, but I mean, they didn't buy
20 much of that. But yes, they are all in the
21 same scenario. Yes.

22 Q. Was most -- to your knowledge,
23 was most of the product being exported
24 Stacker 2?

25 A. Yes. 20-counts and 100-counts,

1 Rosarbo

2 yes.

3 Q. Did you know that one of N.V.E.'s
4 export clients was a company called Smart
5 World Netherlands?

6 A. Yes.

7 Q. And they were located in Holland?

8 A. Yes.

9 Q. And did you have any dealings
10 with Smart World Netherlands while you were
11 at N.V.E.?

12 A. Yes.

13 Q. What were your dealings with
14 Smart World Netherlands?

15 A. They were actually
16 Mr. Palmeroni's client. I got to know them
17 through him. And the dealings with them
18 were they bought product from us and they
19 distributed it overseas.

20 Q. Who did you deal with in Smart
21 World Netherlands?

22 A. I remember his first name, there
23 was a Jeroen.

24 MR. VORT: Can you spell that.

25 MR. O'CONNOR: I will get to the

1 Rosarbo

2 spelling in a second.

3 A. And then a Tom.

4 Q. So the fellow you were saying
5 Jeroen, do you remember it being spelled
6 J-E-R-O-E-N?

7 A. Yes.

8 Q. Do you remember his last name
9 being Gravelijn, G-R-A-V-E-L-I-J-N? Do you
10 recall that?

11 A. Yes.

12 Q. And the fellow, you said Tom or
13 Thomas?

14 A. Yes.

15 Q. Do you remember his last name
16 being Sikkink, S-I-K-K-I-N-K?

17 A. Yes.

18 Q. What were your dealings with
19 Mr. Gravelijn and Mr. Sikkink?

20 A. They would buy product at a price
21 and they put the order in and stuff would
22 get shipped to them. How they got their
23 pricing was between them. And Joe set up
24 the pricing, which then I didn't know what
25 that was until after the fact and then it

1 Rosarbo

2 went on from there. They would -- we would
3 contact each other and figure out what had
4 to be ordered. Put the order into N.V.E.
5 pay for it, and then get it shipped.

6 Q. So did you ever meet these two
7 fellows?

8 A. I met them a couple of times, one
9 time we went over there.

10 Q. Over where?

11 A. Netherlands. One time. But I
12 met them one or two times in the States
13 when they came here.

14 Q. So who went with you to Holland
15 or the Netherlands to meet with --

16 A. Mr. Palmeroni.

17 Q. -- to meet with Sikkink and
18 Gravelijn, who went with you?

19 A. Mr. Palmeroni.

20 Q. Anybody else?

21 A. No.

22 Q. And what were the nature of the
23 discussions between Palmeroni, yourself,
24 Gravelijn and Sikkink in the Netherlands?

25 A. Actually, it was just to meet for

1 Rosarbo

2 the first time and actually have a little
3 fun to be honest with you. It wasn't much
4 business at all. That's what I recall.

5 I finally got to meet them, where
6 they were. They took us out and it was kind
7 of like, I don't know, what kind of call
8 you want to say to do with a client, you
9 know, when you get together with a client
10 for the simple fact of good relations, good
11 rapport, whatever you want to call that.

12 Q. Where did they take you out?

13 A. Anywhere around the area. Just
14 to -- I mean, actually, played a lot of
15 basketball. I mean, a couple of parties, a
16 couple of bars. That's about it. It was
17 only for a couple of days. We both flew
18 first class. It was around -- it was
19 around July. I remember it was -- 4th of
20 July was close.

21 Q. And you said you also met with
22 them here in the New York, New Jersey area?

23 A. Well, yeah, they came to the
24 company. I met them there.

25 Q. I think you said Mr. Rosarbo that

1 Rosarbo

2 orders would be placed for product. When
3 someone like Smart World wanted to
4 purchase, orders would be placed, is that
5 right?

6 A. Correct.

7 Q. Can you tell us the process how
8 at that time, between 2000 and 2004, how
9 were orders placed?

10 A. They were -- I had a rapport
11 through an e-mail. At first, I was calling
12 them and then I set up an e-mail account.
13 And I had a rapport that I -- I was going
14 to place a certain amount, an order for
15 whatever it was. And then they would place
16 the order to N.V.E. and then it would get
17 paid, and then it would get manufactured,
18 and it would get shipped out.

19 Q. And so if this was a legitimate
20 N.V.E. sale, what paperwork would you
21 generate to tell the folks in either
22 N.V.E. -- let me finish so you know what I
23 am talking about.

24 A. Your right.

25 Q. -- in the N.V.E. offices whoever

1 Rosarbo

2 was handling that, did they know what the
3 sale was, billing, receiving part, what
4 kind of paperwork would be generated?

5 A. By fax, they would fax in an
6 order, into the fax machine, and then our
7 order would be put into the area to go get
8 it processed. And then when it was ready
9 for pick up, arrangements had to be made
10 for it to get picked up. And that's
11 basically it.

12 Q. So if they gave you an order by
13 telephone, would there have to be a fax or
14 could you tell someone that you had an
15 order for a certain amount of product?

16 A. Yeah, I could have said that,
17 yeah. It didn't have to be a fax. We
18 could have done it directly. But most of
19 the time, almost 99 percent of the time we
20 wanted a fax because we were having
21 problems with, well, I didn't order that, I
22 didn't order how much.

23 So after certain amount of time,
24 we wanted to do it by all by e-mail or by
25 fax. But on the e-mail, you copied it

1 Rosarbo

2 anyways and then proceeded to go, move
3 forward.

4 Q. Smart World Netherlands made a
5 purchase of a certain amount of product and
6 that either comes by fax or -- and that's
7 given to someone in purchasing or in order
8 to process that order, is that correct?

9 A. Yes.

10 Q. And then you said the product
11 would either be manufactured or come out of
12 inventory, is that fair?

13 A. Correct.

14 Q. And then what would happen to the
15 product once it either was manufactured or
16 was already in inventory? What would
17 happen, actually physically happen to that
18 product?

19 A. Well, arrangements had to be made
20 for it to be picked up.

21 Q. How did that happen?

22 A. Shipping part. I would contact a
23 shipper and they would come and pick up the
24 product.

25 Q. It would be shipped to Holland,

1 Rosarbo

2 presumably?

3 A. Yes.

4 Q. For a legitimate purchase?

5 A. Correct. Yes.

6 Q. So a trucking company would have
7 to come to the factory or warehouse, come
8 get the product and take it away?

9 A. Correct.

10 Q. Then the folks at N.V.E., once
11 it's given to the trucking company, have
12 nothing more to do with it, correct?

13 A. That's correct, yes.

14 Q. And in terms of Smart World
15 Netherlands, they were buying at the lower
16 export prices, is that correct?

17 A. Yes.

18 Q. Did you recall if Smart World
19 Netherlands is one of N.V.E.'s larger
20 export customers?

21 A. I don't know. I mean, they had
22 to be right there. I tell you the truth,
23 I'm not sure how many export customers they
24 really had to be honest with you. I don't
25 know.

1 Rosarbo

2 Q. Was Smart World Netherlands the
3 largest export company that you dealt with
4 while you were at N.V.E.?

5 A. Yes.

6 Q. And do you know what their
7 average purchase order would be in terms of
8 dollars?

9 A. 25,-- 30,000.

10 Q. At a time?

11 A. Yes.

12 Q. And during this time period, from
13 say 2000 up until 2004, do you know whether
14 N.V.E. sales were rising?

15 A. Oh, yes, without a doubt. When I
16 was let go, he was grossing 10 million a
17 month.

18 Q. And so sales had gone up --

19 A. Significantly.

20 Q. Significantly?

21 A. Yes.

22 Q. During the time from when you
23 started?

24 A. Yes.

25 MR. VORT: Could you read back

1 Rosarbo

2 the answer please.

3 (Record read)

4 Q. Mr. Rosarbo, did there come a
5 time when you Mr. Palmeroni formed a
6 company called Smart World here in the
7 United States?

8 A. Say that again.

9 Q. Did there come a time when you
10 and Mr. Palmeroni formed a company called
11 Smart World here in the United States?

12 A. Yes.

13 Q. And how did that come about?

14 A. It came about through getting
15 mycorporation.com, through a computer, from
16 Nevada and it came in a box and it showed
17 you point blank how to set up a
18 corporation.

19 Q. And so whose idea was it to set
20 up a company called Smart World in Nevada?

21 A. Mr. Palmeroni's.

22 Q. And did Mr. Palmeroni tell you
23 what the purpose of setting up Smart World
24 in the United States?

25 A. As it was going on, no. It was

1 Rosarbo

2 done through the computer, it came and then
3 we started -- the idea came out as to why
4 to do it.

5 Q. Tell me what you learned.

6 A. Well, I learned that you can set
7 up Smart World, they can buy the product at
8 a certain price. It could get shipped, but
9 it doesn't have to get shipped overseas.
10 It gets shipped and stays in the United
11 States and gets sold at another price,
12 meaning that we had to open up another
13 corporation, which we did, called American
14 Wholesale. And that would be the
15 corporation that got paid for the product.

16 And then -- then the monies that
17 were generated in the American Wholesale
18 would be passed on to Smart World to repeat
19 the process.

20 Q. So was this your idea to do this?

21 A. No.

22 Q. Whose idea was it?

23 A. It was Joe's idea and then I ran
24 with it.

25 Q. Whose idea was it to use the

1 Rosarbo

2 Smart World name, the same as this company
3 in the Netherlands?

4 A. Joe's idea. And the reason why I
5 say that is because Smart World was Joe's
6 client. I didn't know them. I didn't know
7 hardly any of the clients that bought the
8 product. I got to know them through my
9 boss, which was Joe Palmeroni. Then I
10 establish rapports with them.

11 Q. In the beginning, did you have
12 any conversations with the Smart World
13 Netherlands people about setting up a Smart
14 World Company here in the United States?

15 A. No.

16 Q. To your knowledge, in the
17 beginning, did Mr. Palmeroni have any
18 conversations with the Smart World people
19 in the Netherlands about setting up a Smart
20 World Company in the United States?

21 A. Was I witness to it in other
22 words?

23 Q. We will start with that.

24 A. No.

25 Q. Did he tell you about it?

1 Rosarbo

2 A. No.

3 Q. Do you know why the Smart World
4 Company was set up in Nevada as opposed to
5 another state?

6 A. I was told because the way Nevada
7 is set up, there's significant layers that
8 you can't find out certain information.

9 Q. And who told you that there were
10 layers?

11 A. Mr. Palmeroni.

12 Q. I am going to mark Exhibit 1
13 entitled Articles of Incorporation for
14 Smart World Inc. and on the bottom it's
15 marked as Sarinelli-Smart World-0019, 0020,
16 0021, 0022, 0023, and 0035.

17 (Exhibit 1, Articles of
18 Incorporation, document Bates stamped
19 Sarinelli-Smart World 0019 through 23
20 and 0035 marked for identification, as
21 of this date.)

22 Q. Do you see that, sir?

23 A. Yes.

24 Q. Did you have a chance to look at
25 that?

1 Rosarbo

2 Mr. Palmeroni's address?

3 A. Yes, yes, his or his sister's,
4 one of the two. I don't even see a
5 signature on here that I even signed, so.

6 Q. The company didn't operate out of
7 Nevada, did it?

8 A. No. That was just the registered
9 agent.

10 Q. I believe on your tax returns,
11 you said that the company operated out of
12 New Rochelle, New York, is that correct?

13 A. That was where the checking
14 accounts were set up. And I can -- I'm
15 pretty sure, given the time, I can also go
16 there and produce the actual signatures
17 because we done that together.

18 Q. Who signed the signature cards --
19 let me finish -- so let me go back to where
20 I was. Who signed the signature cards for
21 the Smart World Inc. account?

22 A. Myself and Joe Palmeroni.

23 Q. Were there any other owners of
24 Smart World Inc. other than yourself and
25 Mr. Palmeroni?

1 Rosarbo

2 A. No.

3 Q. Did anybody else other than
4 yourself or Mr. Palmeroni have access to
5 the Smart World Inc. bank accounts?

6 A. No.

7 Q. Did anyone else other than
8 yourself and Mr. Palmeroni have signature
9 authority over the Smart World Inc. bank
10 accounts?

11 A. No.

12 Q. And at the risk of being
13 repetitive, what was the ownership
14 breakdown between yourself and
15 Mr. Palmeroni with regard to Smart World
16 Inc.?

17 A. Equally distributed at 50
18 percent, equal stock.

19 Q. Back to New Rochelle. Why did
20 you decide to open a bank account in New
21 Rochelle, New York?

22 A. Logistics, it was kind of close
23 by from where we worked, if I -- basically
24 logistics. It was a Bank of America, but
25 basically logistics.

1 Rosarbo

2 Q. New Rochelle is a fair distance
3 from Andover or Sparta. Isn't it?

4 A. Yes, but going all the way either
5 to Connecticut or some place else in
6 Pennsylvania -- it was kind of like a
7 middle point.

8 Q. You could have opened an account
9 in New Jersey, right?

10 A. Yeah, we could have.

11 Q. But you didn't?

12 A. No.

13 Q. That said, so is there any
14 discussion that you wanted to have a New
15 York bank account to make it look like
16 Smart World Netherlands?

17 A. No. That's -- that didn't come
18 into play, no. I didn't think it mattered
19 one way or the other. We didn't think of
20 that.

21 Q. Was Smart World Inc., your
22 company with Mr. Palmeroni, was that set up
23 to purchase N.V.E. product?

24 A. Yes.

25 Q. And was it set up to purchase

1 Rosarbo

2 N.V.E. product at the export price as
3 opposed to the domestic price?

4 A. Yes.

5 Q. Was Smart World Inc. set up to
6 take advantage of the similarity in name
7 with the Smart World Netherlands company?

8 A. Yes.

9 Q. The product that Smart World Inc.
10 was purchasing though, did you and
11 Mr. Palmeroni intend that you would resell
12 it in the United States?

13 A. Yes.

14 Q. Did either you or Mr. Palmeroni
15 have any intent to export any of the goods
16 purchased by Smart World Inc. outside of
17 the United States?

18 A. No.

19 Q. Did you ever tell Mr. Occhifinto
20 or anyone else at N.V.E. other than
21 Mr. Palmeroni that Smart World Inc. was
22 being used to purchase N.V.E. product at
23 the export price?

24 A. No.

25 Q. To your knowledge, did

1 Rosarbo

2 Mr. Palmeroni ever tell Mr. Occhifinto that
3 he was using Smart World Inc. to purchase
4 N.V.E. product at the export price?

5 A. No.

6 Q. Did you understand that if
7 Mr. Occhifinto found out that you were
8 purchasing product at the export price but
9 selling it domestically that he would try
10 and stop that?

11 A. Yes, although I didn't think it
12 would've got this far to be honest with
13 you. I thought -- I didn't think he would
14 give me a pass, don't get me wrong, but I
15 didn't think he would -- it would have
16 gotten this far.

17 Q. I understand. My question is
18 more narrow.

19 A. No, no.

20 Q. At the time this was happening --

21 A. No.

22 Q. -- let me finish.

23 A. Go ahead.

24 Q. Back in the time in the early
25 2000s, do you think he would have tried to

1 Rosarbo

2 stop it then if he found out about it?

3 A. Yes, yes, of course, yes.

4 Q. Our next exhibit, Mr. Rosarbo, is
5 going to be 2001, form 1120 income tax
6 return for Smart World Inc., which is
7 designated as Sarinelli-Smart World 0001.

8 MR. VORT: This is Rosarbo 2?

9 MR. O'CONNOR: Yes. Through what
10 appears to be 0034.

11 (Exhibit 2, 2001 Income Tax
12 Return for Smart World Inc., Bates
13 stamped Sarinelli-Smart World 0001
14 through 34 marked for identification,
15 as of this date.)

16 Q. Do you recognize that document,
17 sir?

18 A. Yes.

19 Q. That's the tax return from 2001
20 for Smart World Inc., correct?

21 A. Yes.

22 Q. Now, there is a little blue tab
23 on page Sarinelli-Smart World-0030. Do you
24 see that?

25 A. Yes.

1 Rosarbo

2 Q. Just take a look at that. Does
3 that show that both you and Mr. Palmeroni
4 each owned 50 shares in Smart World Inc.?

5 A. Yes, it does. 50/50.

6 Q. Whose handwriting is that?

7 A. Down here? That's Joe
8 Palmeroni's handwriting.

9 Q. You are pointing to --

10 A. Talking about this?

11 Q. That's his signature where it
12 says signature of officer?

13 A. Yes.

14 Q. That's Mr. Palmeroni's?

15 A. Yes.

16 Q. What about up higher where it
17 says Jesus Palmeroni, in that set of boxes?

18 A. Yes, that also.

19 Q. Is?

20 A. Joe Palmeroni's signature, yes.

21 Q. The first box with the
22 handwriting that says "Jesus Palmeroni,"
23 not the actual signature. Do you see that?

24 A. Talking about right here?

25 Q. The first box here, first box on

1 Rosarbo

2 the left, all the way on the left.

3 A. First box on the left, it's
4 printed.

5 Q. Yes, whose handwriting is that?

6 A. That's Joe Palmeroni.

7 Q. Right below that, it says, in
8 printed words, Vincent J. Rosarbo. Do you
9 see that?

10 A. Yes.

11 Q. Whose handwriting is that?

12 A. That's mine.

13 Q. Next to that, whose signature is
14 that?

15 A. That's mine.

16 Q. That's your signature?

17 A. Yes.

18 Q. Mr. Rosarbo, can you tell me this
19 idea of setting up a Smart World American
20 company, how did that come up?

21 A. Having discussions at his home.
22 Like I said, I was -- I started working
23 there and I was traveling back and forth
24 and it got too much for me. So I started
25 staying at his house.

1 Rosarbo

2 Q. Let me back this up. There is
3 a lot of information there. So the N.V.E.
4 office headquarters, factory, first it was
5 in Sparta, New Jersey, correct?

6 A. Yes.

7 Q. At some point, they moved over to
8 Andover, New Jersey?

9 A. Correct.

10 Q. You were living in Connecticut?

11 A. Correct.

12 Q. Somewhere just north of New
13 Haven, is that correct?

14 A. Yes, Branford.

15 MR. VORT: North of New Haven?

16 Q. Then, sir -- stay with me.

17 So where was Mr. Palmeroni living
18 at this time?

19 A. That address, Huntington -- no.
20 I'm sorry, that's not it. He was in -- he
21 was in a place up near Great Mountain Gorge
22 but not exactly up there. Up near that
23 area though. He was renting out --
24 actually, I think he bought it, but don't
25 quote me on it. But it's a -- give me -- I

1 Rosarbo

2 can't give you exact address.

3 Q. New Jersey, Pennsylvania?

4 A. No, it's New Jersey. Vernon. It
5 was up in Vernon.

6 Q. How far approximately is Vernon
7 from Sparta?

8 A. Forty minutes.

9 Q. And Vernon from Andover?

10 A. Vernon to Andover was further,
11 about an hour.

12 Q. How far from where you were in
13 Connecticut to the N.V.E. offices?

14 A. That was, that was a couple of
15 hours easy.

16 Q. So am I correct then that you
17 would sometimes stay over at
18 Mr. Palmeroni's house or apartment?

19 A. Yes.

20 Q. Because you were friendly at that
21 time?

22 A. Correct.

23 Q. So this conversation about Smart
24 World, did this take place at N.V.E. or did
25 it take place at Mr. Palmeroni's apartment

1 Rosarbo

2 or somewhere else?

3 A. It took place at Mr. Palmeroni's
4 apartment.

5 Q. And tell me as much as you can
6 remember about the first time that you and
7 Mr. Palmeroni talked about setting up an
8 American Smart World company?

9 A. I mean, I don't know word for
10 word. He was playing around on the
11 computer. He showed me that you could
12 order corporations off the computer
13 mycorp.com. It's a Nevada Corp. We can
14 open up a company. And how it got into --
15 I don't recollect how it got into it being
16 Smart World, but somehow it did.

17 You know, the first corporate --
18 we ordered two of them. The first
19 corporation being Smart World for the
20 simple fact of buying product from Smart
21 World and setting up a price limit and then
22 ordering the next corporation which was
23 American Wholesale.

24 Q. Let me back you up. Before you
25 decide to go online and order the corporate

1 Rosarbo

2 documents, is there any discussion as to
3 what you were going to do or how you were
4 going to make money?

5 A. Yes, I was questioning it like,
6 you know, not too sure what you mean by
7 this. And why we have to do it in the
8 Nevada. And that's when I was educated
9 into the fact that there is not a lot of
10 layers there in Nevada. There is things
11 that you can hide, stuff to that -- which I
12 don't know. I mean, I just took his word
13 for it.

14 Now I know, yeah, you can do it
15 in Delaware. There is a couple of other
16 areas or states that you can just open up
17 corporations which -- without limit you.

18 Q. But at the time, you understood
19 the reason for going to Nevada was so you
20 could hide your ownership interest in the
21 corporation?

22 A. Yes, yes.

23 Q. And by you, I mean both you and
24 Mr. Palmeroni?

25 A. Yes.

1 Rosarbo

2 Q. But I want to know if there is
3 any conversation as to how you were going
4 to make money?

5 A. Well, that came a little bit
6 later after we ordered the corporations.
7 And that's when I was told pricing would be
8 set up through the people in Smart World.
9 They will have a rapport with Bob. They
10 will set up the pricing there and product
11 will be ordered and then sold and put into
12 American Wholesale. And then they also
13 wanted money too.

14 Q. Who is they?

15 A. Jeroen and Tom.

16 Q. Let me back you up. Obviously,
17 this case has been going on for a number of
18 years and we have been dealing with this a
19 number of years, Mr. Rosarbo.

20 A. Yes.

21 Q. I am trying to get back to
22 basics. I think you and I know a lot.

23 A. OK.

24 Q. Was there a conversation between
25 you and Mr. Palmeroni that you could make

1 Rosarbo

2 money on the difference between the export
3 price and domestic price?

4 MR. VORT: Objection, leading.

5 Q. Was there a conversation to that
6 effect or not?

7 A. Yes.

8 Q. About when did that conversation
9 take place?

10 A. I don't know, a few months after
11 the corporations came and then we started
12 talking about -- they wanted a percentage
13 of what the profit was going to be because
14 it didn't happen over night.

15 Q. So that was the folks in Smart
16 World Netherlands wanted a piece of the
17 action, is that right?

18 A. Yes.

19 Q. When you're setting up Smart
20 World in Nevada with Mr. Palmeroni, were
21 you both working for N.V.E. at that time?

22 A. Yes.

23 Q. And you were involved in sales at
24 that time?

25 A. Yes.

1 Rosarbo

2 Q. And had Mr. Palmeroni become the
3 sales manager for N.V.E. at that point in
4 time?

5 A. Yes.

6 Q. So he had been promoted to head
7 salesman?

8 A. Yes.

9 Q. Prior to the time that you
10 actually set up the corporation in Nevada,
11 was there any discussion as to why you were
12 doing this and what would be the point of
13 it?

14 A. Well, to earn money.

15 Q. So there was a discussion prior
16 to the time you actually set the companies
17 up or at about the same time. Was there a
18 conversation between you and Mr. Palmeroni
19 about how you could use this to make money
20 for yourselves?

21 A. Yes.

22 Q. And was there a conversation
23 between you and Mr. Palmeroni about how it
24 was that you were going to make money with
25 this scheme?

1 Rosarbo

2 A. Yes.

3 Q. And which was -- tell me about
4 that.

5 A. Well, buy -- set up the pricing
6 from Smart World Netherlands to N.V.E.
7 Pharmaceuticals, put an order in for the
8 product through Smart World, pay for the
9 product.

10 Once it's paid, you generate a
11 copy to the fax that it was paid, hand it
12 to shipping, shipping produces the product,
13 and then you make arrangements for the
14 product to be picked up and stored at a
15 warehouse.

16 And then clientele actually --
17 the clientele was mostly Carlos, C.B., but
18 there were other people who would call and
19 place an order and their product would be
20 shipped. And I got -- OK, go ahead.

21 Q. So presumably then you and
22 Mr. Palmeroni would make a profit by
23 selling it for more than what you purchased
24 it for, correct?

25 A. Yes.

1 Rosarbo

2 Q. Was it your plan at the time, you
3 and Mr. Palmeroni to sell the product for
4 less than what N.V.E. itself was selling
5 the product for?

6 A. Yes, because that was the only
7 way we could move the product. I mean,
8 there was no reason to do it if we were
9 going to sell it at the same price because
10 it wouldn't have moved. So we had to sell
11 it at a cheaper price.

12 And when people started
13 recognizing they could get it at a cheaper
14 price, they wanted to buy more of it.

15 Q. Did you understand that when you
16 and Mr. Palmeroni were working for N.V.E.,
17 it was your job to sell product for N.V.E.?

18 A. Of course, yes.

19 Q. How did you find out who were
20 going to be the customers of Smart World
21 and American Wholesale?

22 A. That was Mr. Palmeroni, most of
23 it -- I'm going to say all of them because
24 I didn't have any clients. Most of the
25 people who bought the product through those

1 Rosarbo

2 two corporations were all Mr. Palmeroni's
3 clientele. And through his word of mouth,
4 they would contact me and we would go from
5 there.

6 Q. When they contacted you, were you
7 using a cell phone?

8 A. Yes.

9 Q. Was Mr. Palmeroni using a cell
10 phone at that time?

11 A. Yes.

12 Q. Was he using that both for N.V.E.
13 business and Smart World Inc. business?

14 A. I would say yes.

15 Q. Did you talk to Mr. Palmeroni on
16 his cell phone about these Smart World Inc.
17 sales?

18 A. No.

19 Q. You talked to him in person?

20 A. Yes.

21 Q. You mentioned Carlos, correct?

22 A. Yes.

23 Q. That's Carlos Bengoa,
24 B-E-N-G-O-A?

25 A. Correct.

1 Rosarbo

2 Q. And he ran a company called CB
3 Distributors, is that correct?

4 A. That's correct.

5 Q. Was Carlos Bengoa and CB
6 Distributors a customer of N.V.E.?

7 A. Yes.

8 Q. And did -- who suggested that you
9 sell product directly to CB?

10 A. That had to be a conversation
11 between Mr. Palmeroni and CB because in the
12 beginning for the first two, two and a half
13 years, they were very close with each
14 other.

15 And Mr.-- Carlos' business grew
16 significantly from the time that I was
17 hired up to a certain point. So they had a
18 good rapport with each other and that's how
19 he ended up contacting me. Actually,
20 that's how I got to know him. And they
21 were together before I even got to the
22 company. Seven, eight months before that.

23 Q. So CB and Carlos Bengoa was a
24 customer of N.V.E. and Mr. Palmeroni had
25 that account?

1 Rosarbo

2 A. Yes. And I've had -- when I
3 first met them, the reason why I am stating
4 what I'm stating, is it seemed like CB was
5 rivals with another company in Texas, a
6 guy -- the owner was Ravi, R-A-V-I, and he
7 wanted to grow his business the way his
8 business was going, so it seemed like there
9 was a rivalry there.

10 Q. Let me get through some of the
11 pronouns. You are saying Carlos Bengoa
12 wanted to grow his business?

13 A. Well, they didn't like each
14 other.

15 Q. Carlos and Ravi?

16 A. They were in competition.

17 Q. So Ravi at that time had a bigger
18 business than Carlos?

19 A. Yes, and I'm -- from the
20 conversations that we had, Joe and CB got
21 together and CB started -- his business
22 started growing through Joe and,
23 eventually, through me. To a point that he
24 got to be a big player.

25 Q. Did you and Joe Palmeroni sell

1 Rosarbo

2 these export goods that have been diverted
3 to CB?

4 A. Yes.

5 Q. Tell us how a transaction with CB
6 would take place then.

7 A. He would call me up and tell me
8 what he wanted and I would place the order.

9 Q. How would you place the order?

10 A. Through a, um, e-mail, or if I
11 was in the office. Most of the time it was
12 in the office. I would place -- write a
13 handwritten order to the office. Hand it
14 in.

15 Q. That order, that handwritten
16 order wouldn't say that it was an order for
17 CB, would it?

18 A. No.

19 Q. Who would it say it was an order
20 for?

21 A. It was -- well, the product was
22 already -- at the time, the product was
23 already in the warehouse. So CB would tell
24 me -- I'm going to retract that, I'm sorry.
25 With CB, the product was already in the

1 Rosarbo

2 warehouse.

3 Q. When you say warehouse, whose
4 warehouse?

5 A. The warehouse that was set up for
6 the product to go to before it went to
7 overseas.

8 Q. Let me back you up to try to --

9 A. That's not a problem.

10 Q. I want to make sure. Presumably
11 N.V.E. has a warehouse on site where it
12 stores product?

13 A. Yes.

14 Q. Is that correct?

15 A. Correct.

16 Q. As part of the scheme with Smart
17 World Inc., you and Joe had set up a
18 separate warehouse here in New Jersey, is
19 that correct?

20 A. Correct.

21 Q. And that is the Foremost
22 warehouse?

23 A. That's correct.

24 Q. F-O-R-E-M-O-S-T?

25 A. Yes.

1 Rosarbo

2 Q. Where was the Foremost warehouse
3 located?

4 A. It's in New Jersey. Near Giant
5 Stadium.

6 Q. East Hanover?

7 A. Yeah.

8 Q. So how did you come upon the
9 Foremost warehouse in East Hanover?

10 A. We went riding around looking for
11 warehouses and that happened to be an area
12 where there were tons of them. There was a
13 whole mess of products that were being sold
14 out of that warehouse.

15 Q. So who found the warehouse?

16 A. We both did.

17 Q. You and Mr. Palmeroni?

18 A. Yes.

19 Q. So am I correct, sir, that
20 through Smart World Inc. you and
21 Mr. Palmeroni would set up an order for
22 N.V.E. product, is that correct?

23 A. Yes.

24 Q. Primarily Stacker 2 20-counts?

25 A. And 100-counts.

1 Rosarbo

2 Q. And 100-counts?

3 A. Yeah.

4 Q. Is it correct, sir, you would
5 claim that was an order from Smart World
6 Netherlands?

7 A. Correct.

8 Q. But the order was totally for
9 Smart World Inc. the United States company?

10 A. Yes.

11 Q. And then how would you pay for
12 that product?

13 A. Through a wire transfer.

14 Q. From?

15 A. From Smart World Inc.

16 Q. And that's the bank account you
17 set up at the Bank of America up in New
18 Rochelle?

19 A. Yes.

20 Q. Then after the product has been
21 ordered in the name of Smart World
22 Netherlands, would it say that the product
23 was supposed to be shipped or picked up to
24 go to the Netherlands?

25 A. Yes.

1 Rosarbo

2 Q. So how did it come that the
3 product does not get shipped to the
4 Netherlands?

5 A. Well, you have -- you set up a
6 warehouse --

7 Q. This is the warehouse, Foremost
8 warehouse?

9 A. Correct.

10 Q. When you say "you," you set it up
11 right?

12 A. Correct. And once the product is
13 ready to be picked up, they were given
14 telephone numbers for them to pick up --

15 Q. Who was given telephone numbers?

16 A. They meaning the people in N.V.E.
17 gave them a telephone number to pick up the
18 product. And they would come and pick it
19 up.

20 Q. Slow down, I'm a little lost.
21 Who would you give a telephone number to?

22 A. To shipping people at N.V.E.
23 would have the telephone number for
24 Foremost to pick up because that's how you
25 do it anyway. It gets picked up from a

1 Rosarbo

2 warehouse wherever. And goes to a certain
3 area. Now, if it is going overseas, it
4 goes to a shipping area that's going to be
5 taking it overseas.

6 Q. Did Foremost -- is your deal with
7 Foremost, is that when they got a call from
8 N.V.E. that product was ready that Foremost
9 would send a truck up to get it to bring it
10 back to the Foremost warehouse?

11 A. Yes.

12 Q. And then --

13 A. Then it sat there.

14 Q. And then you and Mr. Palmeroni,
15 through Smart World or American Wholesale,
16 would arrange to pay Foremost, is that
17 correct?

18 A. Through wire transfer, yes.

19 Q. And would that --

20 A. No, Foremost? No, that was out
21 of a check from American Wholesale.

22 Q. Who were the owners of American
23 Wholesale?

24 A. Me and Joe Palmeroni.

25 Q. And what was your split of

1 Rosarbo

2 ownership of American Wholesale?

3 A. Same as Smart World, 50 percent
4 each.

5 Q. I think it was American Wholesale
6 Distributors. Is that right?

7 A. Yes.

8 Q. A.W.D.?

9 A. Correct.

10 Q. We can take a five-minute break,
11 please.

12 (Recess)

13 Q. I just want to talk a little bit
14 more about the purchase process.

15 A. OK.

16 Q. So if there was an order from CB
17 or anyone else who you were selling to
18 through the Smart World Inc. scheme, you
19 said that you would fill out a purchase
20 order. Is that correct?

21 A. Yes. But that --

22 Q. Let me finish --

23 A. Go ahead. I'm sorry.

24 Q. So that's just a piece of paper?

25 A. Yes.

1 Rosarbo

2 Q. And that's something you would
3 hand-write on?

4 A. Yes.

5 Q. And if I'm right, you would write
6 there is an order from Smart World
7 Netherlands, correct? That's what you
8 would write on it --

9 A. No.

10 Q. What would you write on it?

11 A. What I would write was a purchase
12 order for CB from American Wholesale.

13 Q. OK, we are talking about American
14 Wholesale not --

15 A. Yes, Smart World was only there
16 to exist to get the product at the overseas
17 price. That's it. And then also to
18 transfer money from American Wholesale into
19 Smart World to redo the process again,
20 because you had to pay the product through
21 Smart World.

22 Q. That's how you paid N.V.E.?

23 A. Yes.

24 Q. So let me get this right. How
25 does CB know how to deal with you?

1 Rosarbo

2 A. Through Mr. Palmeroni.

3 Q. And the price that you and
4 Mr. Palmeroni, the American Wholesale --

5 A. Negotiated price.

6 Q. Who negotiated the price with CB?

7 A. Mr. Palmeroni.

8 Q. How did you find out what the
9 price was?

10 A. Mr. Palmeroni would tell me.

11 Q. Did he tell you this was the
12 price we are going to charge CB for this
13 amount of profit?

14 A. Correct.

15 Q. You would write up an order?

16 A. He would place an order.

17 Q. Who was he?

18 A. He, meaning Carlos, would place
19 an order with me. I would write it up. I
20 would fax it to him --

21 Q. To?

22 A. To Mr. -- to Carlos. To verify
23 his order.

24 Q. OK.

25 A. And then I would contact Foremost

1 Rosarbo

2 International, tell them the order, give
3 them the address, you know. Sometimes CB
4 even came and picked it up on his own. And
5 the product would get shipped out to him.

6 Q. OK, so --

7 A. And then he would pay into
8 American Wholesale.

9 Q. And then American Wholesale would
10 transfer money to Smart World Inc.?

11 A. To redo the process.

12 Q. To pay N.V.E. to buy more
13 product?

14 A. Correct -- yes. And sometimes
15 there would be a surplus of money in
16 American Wholesale. And that's when we
17 would cut checks for each other that
18 actually say on there corporate split.

19 Q. So it was your profits?

20 A. Correct.

21 Q. Let me move you over to the other
22 side. So the product has to be ordered
23 from N.V.E., is that correct?

24 A. The product has to be --

25 Q. The product has to be ordered

1 Rosarbo

2 from N.V.E.? You were buying -- let me
3 start again. You were buying N.V.E.
4 product?

5 A. Yes.

6 Q. So somehow, Smart World Inc. has
7 to order products from N.V.E., is that
8 correct?

9 A. Yes.

10 Q. So can you explain the process of
11 how Smart World Inc. would order product
12 from N.V.E.?

13 A. Well, I would be -- they would
14 call me.

15 Q. Who is they? You've got to use
16 names.

17 A. Either Jeroen or Tom or they even
18 had a brother-in-law or brother who worked
19 in the warehouse. I don't know what his
20 name was. But they would contact me either
21 by fax machine if I was in the office,
22 or -- I am sorry, never mind. I would
23 contact them.

24 Q. You would contact the folks in
25 the Netherlands?

1 Rosarbo

2 A. Yes, and tell them what I wanted.
3 And then they would contact N.V.E. and
4 place an order.

5 Q. Place an order for stuff that
6 they really were never going to get?

7 A. Correct.

8 Q. And the way they would find out
9 is you would tell them what to order, is
10 that correct?

11 A. Right.

12 Q. And then did that always happen
13 that the order came from the folks in
14 Netherlands? Or did you and Mr. Palmeroni
15 ever just make up orders without going
16 through the Netherlands?

17 A. It always came from the folks
18 through the Netherlands.

19 Q. And then once that order was
20 placed by the folks in the Netherlands, how
21 did it get to the purchase folks at N.V.E.?

22 A. OK, it was placed either by
23 e-mail or fax. We would pick that up,
24 meaning I would see the order, then I would
25 place it with manufacturing, and then go

1 Rosarbo

2 through the process of paying for it.

3 Because once it was manufactured, it
4 wouldn't get shipped out unless it was paid
5 for.

6 Q. If there is an order that comes
7 on a fax machine, who do you physically
8 hand that to?

9 A. One of the girls who were working
10 with us, they were the order placers. I
11 don't remember the girls' names, there was
12 a few of them.

13 Q. You would hand them an order
14 saying I have an order from Smart World
15 Netherlands?

16 A. Yeah, just give it to them. They
17 type it in. Manufacturing would see it and
18 they would start to do the process of
19 either they had to make it or it was
20 already inventory. They would have to
21 package it up and get it ready for
22 shipment. But it would never leave until
23 it was paid up. That was the key with
24 Smart World, it had to be paid up front.

25 Q. After the order was paid for, do

1 Rosarbo

2 you know what happened to that fax from the
3 Netherlands? Did anyone keep it or throw
4 it out, if you know?

5 A. I don't know. But I'm
6 guessing --

7 MR. VORT: Don't guess.

8 Q. I just want to know if you know.

9 A. OK. I don't know where it went.

10 Q. What was in it for Jeroen and
11 Thomas Sikkink in the Netherlands?

12 A. At first, it was very minimal.
13 25 cents to 50 cents a bottle. Something
14 like that, and then it grew, you know. I
15 got word through Mr. Palmeroni that they
16 wanted to be a real partner. Because I
17 guess they seen how many orders were going
18 through. So they wanted to earn more than
19 what they were getting.

20 Q. And all they were doing was
21 letting you use their name, right?

22 A. Correct, ~~and also they negotiated~~
23 ~~the pricing.~~

24 Q. ~~With whom?~~

25 A. ~~Bob.~~

Rosarbo

Q. Did they negotiate with Bob Occhifinto or Mr. Palmeroni?

A. Well, that, I don't know. It could have been both. I'm not sure. Because like I said, that was Joe's client. So he could have got the pricing -- they could have done it together, I'm not sure. But somehow or another, Bob got the pricing. Either directly through them --

Q. You said Bob got the pricing. What do you mean?

A. In other words, it was negotiated either directly through Smart World, through Joe, either one. Because it's only like a one-time thing. And then it stays like that for the longest time until somebody wants to either go up on the pricing or somebody wants to say I want to go down on the pricing.

Then it gets renegotiated again, but there is a big gap in between that happening that, you know, went on for a year, two years, whatever.

Q. Did you ever negotiate a price

1 Rosarbo

2 with Carlos or anyone at CB as to what they
3 would pay for the N.V.E. product?

4 A. No.

5 Q. Was it your understanding that
6 the price that either CB or other customers
7 that you had was less than the ordinary
8 N.V.E. domestic price?

9 A. Yes.

10 Q. What other customers through
11 Smart World Inc. and American Wholesale did
12 you have for N.V.E. product?

13 A. Housholder, Brand New Energy. I
14 mean, there weren't too many. CB bought
15 three-quarters of it.

16 Q. How about a company called I.S.G.
17 or International Sales Group?

18 A. Yes.

19 Q. Where are they located, if you
20 remember?

21 A. I don't remember.

22 Q. If I told you they were in Texas,
23 would that help you remember?

24 A. Yes. Not that much though. The
25 big player was CB Distributors and next big

1 Rosarbo

2 player was Housholder, Brand New Energy.

3 Q. Who did you -- you dealt directly
4 with Aaron Housholder?

5 A. Yes.

6 Q. And did you negotiate the price
7 with Mr. Housholder?

8 A. No.

9 Q. How did you -- how was the price
10 set for Mr. Housholder?

11 A. Through Mr. Palmeroni and then
12 me. I would be told also so that when he
13 called me, we knew right off the bat what
14 the pricing would be. And we would move
15 forward like that.

16 Q. How did you come to sell product
17 to Mr. Housholder through American
18 Wholesale?

19 A. Well, the same way. After a
20 while, I would just --

21 Q. I want to back up. Very, more
22 simple question.

23 A. Go ahead.

24 Q. How were you introduced to
25 Mr. Housholder?

Rosarbo

1

2

A. Yes.

3

4

Q. Was it while Mr. Palmeroni was
working at N.V.E.?

5

A. Yes.

6

7

Q. Was it at the time that he was
the national sales manager of N.V.E.?

8

A. Yes.

9

10

Q. Black Ice, was that a product
that was manufactured by N.V.E.?

11

A. No.

12

13

Q. Do you know who it was
manufactured by?

14

A. No, I don't.

15

16

Q. Was Black Ice a product that was
a competitor to Stacker 2 or --

17

A. Yes.

18

19

Q. And to the other Black Beauty and
Yellow Jacket?

20

A. Yes, yes.

21

Q. It was the same type of product?

22

A. Yes.

23

24

Q. When you were -- excuse me, take
that back.

25

The price that American Wholesale

1 Rosarbo

2 and you and Mr. Palmeroni charged folks
3 like CB or the International Wholesale,
4 would they all get the same price or were
5 there different prices for them?

6 A. No, they all got the same price.

7 Q. And the price, I think you said
8 before, was less than the N.V.E. domestic
9 price?

10 A. Correct.

11 Q. And it was more than the N.V.E.
12 export price that you purchased it for,
13 correct?

14 A. Yes.

15 Q. That's how you made a profit,
16 correct?

17 A. Correct.

18 Q. Was it -- do you know how close
19 was the price to the N.V.E. domestic price?

20 A. I'm not sure.

21 Q. As you sit here today, I think
22 you said most of the stuff you were selling
23 through American Wholesale and Smart World
24 Inc. was the 20-count Stacker 2s, and the
25 100-count Stacker 2s?

1 Rosarbo

2 A. Yes.

3 Q. That would be the majority of the
4 product?

5 A. Yes.

6 Q. Do you recall, as you sit here
7 today, what American Wholesale was charging
8 for, per bottle of 20-count stacker 2s?

9 A. What I was getting from --

10 Q. What you were charging CB,
11 International Wholesale?

12 A. \$2.20 a bottle. I believe.

13 Q. Approximately, \$2.20 a bottle?

14 A. Yes, for the 20-counts. The
15 100-counts, I don't remember. They were
16 definitely more, but I don't remember.

17 Q. Do you recall what Smart World
18 Inc. was paying to buy that product from
19 N.V.E.?

20 A. No, I don't. It was a dollar and
21 change, I just don't know exactly, 1.25,
22 1.30.

23 Q. In that neighborhood between 1.25
24 and 1.30?

25 A. Yes, I believe so, yes. If he

1 Rosarbo

2 goes back, he'll know. But I don't know.

3 Q. And I think you said before that
4 the domestic price was approximately
5 2.75?

6 A. The wholesale price, yes, was
7 \$2.75. Then they flipped it over anywhere
8 between 5 to 7 to 10 dollars.

9 Q. I'm just staying with the
10 wholesale price right now.

11 A. Yes.

12 Q. Is this a good time to take a
13 break.

14 (Luncheon recess)

15 (Continued on next page)

16

17

18

19

20

21

22

23

24

25

1 Rosarbo

2 ~~yes.~~

3 Q. You talked about a company called
4 A.W.D., American Wholesale, correct?

5 A. Correct.

6 Q. That company was owned 50/50 by
7 you and Mr. Palmeroni?

8 A. Yes.

9 Q. Was there also a company called
10 VAR?

11 A. Yes.

12 Q. And those are your initials,
13 aren't they?

14 A. Yes. Well, actually Vinnie,
15 Angie, Rosarbo.

16 Q. OK. So you and your daughter?

17 A. Me and my wife.

18 Q. I keep getting that wrong, I
19 apologize.

20 A. That's OK.

21 Q. Who is the owner of VAR?

22 A. I am.

23 Q. Are you a hundred percent owner
24 of VAR?

25 A. Yes.

1 Rosarbo

2 Q. What was the role of VAR?

3 A. VAR was a company that was set up
4 to -- for the sole purpose of my wife was
5 going to do some trinkets and stuff and
6 sell things and then also to, my -- her and
7 my daughter were members to get like group
8 insurance, medical benefits.

9 Q. Did ultimately your company known
10 as VAR help sell the export N.V.E. product?

11 A. Correct.

12 Q. What was the role of VAR with
13 regard to the sale of the diverted N.V.E.
14 product?

15 A. I'm going to be blunt. Stupidly,
16 I thought that dissolving American
17 Wholesale and using VAR as the money coming
18 in towards the very end would limit my
19 liability. And that's how I ended up
20 putting my wife and my daughter in peril.
21 I wasn't thinking about that. That's why.

22 Q. Explain to me how you thought it
23 would limit your liability.

24 A. That's what I said. Stupidly.
25 In other words, I dissolved American

1 Rosarbo

2 Wholesale and started using VAR. For what
3 reason? Because I was -- I wasn't smart
4 enough. I should have just stood where I
5 was and that was it. That's how I put them
6 in peril with this scenario because they
7 had nothing to do with it.

8 Q. So did -- was the role of VAR
9 then basically now just a role that A.W.D.
10 played earlier in the scheme?

11 A. No, that's not the reason why I
12 set VAR up. VAR was set up for --

13 Q. I'm trying to get to a different
14 question. I want to get to how VAR was
15 used regard to the use of the sale of the
16 diverted N.V.E. product?

17 A. The same scenario as American
18 Wholesale. So in other words, monies paid
19 for product would go into VAR instead of
20 American Wholesale, and then -- and it was
21 a very, very short time. It didn't last
22 long. And then some of that money will go
23 into Smart World to rebuy product. So it
24 was the same -- it was used for the same
25 purpose.

1 Rosarbo

2 Q. The use of VAR or V-A-R, was that
3 after you had left N.V.E.?

4 A. Yes.

5 Q. Was that after Mr. Palmeroni had
6 been let go by N.V.E.?

7 A. No. It was the same time.

8 Q. Let me just -- I don't really
9 understand that answer. So you used VAR
10 after you had left N.V.E., is that right?

11 A. Yes.

12 Q. Were you using VAR while
13 Mr. Palmeroni was still employed by N.V.E.?

14 A. Yes.

15 Q. And you said, you dissolved AWD,
16 is that correct?

17 A. Correct.

18 Q. What did you do to dissolve AWD?

19 A. You had a -- to the registered
20 agency, you had to do paperwork. Really, I
21 forget. You had to do paperwork to send in
22 there and tell them that the company is no
23 longer in existence.

24 Q. Did Mr. Palmeroni know that you
25 were going to dissolve AWD?

1 Rosarbo

2 A. Yes.

3 Q. How did he know that?

4 A. I told him.

5 Q. What did you tell him was the
6 reason you were going to do this?

7 A. Well, the same scenario.

8 Q. Tell me.

9 A. Well, I was starting feeling
10 uncomfortable with American Wholesale and I
11 wasn't with the company anymore, as far as
12 N.V.E. was concerned. And I was just going
13 to dissolve American Wholesale and I was
14 going to use VAR.

15 Q. Now, you said that Mr. Palmeroni
16 was a 50 percent owner of AWD, is that
17 correct?

18 A. Yes.

19 Q. But you were the 100 percent
20 owner of VAR?

21 A. Yes.

22 Q. Did the profits you made from the
23 sale of the diverted export product, did
24 you change the way the profits were split
25 between you and Mr. Palmeroni when you

1 Rosarbo

2 started using VAR?

3 A. No.

4 Q. How did you split the profits
5 with Mr. Palmeroni when you started using
6 VAR?

7 A. It was still 50/50. But --
8 towards the very end, there wasn't much
9 that was being sold in there. So I don't
10 quite remember from the time that I was
11 selling product to the time that it all got
12 dissolved -- I mean squashed. That -- if a
13 check was ever cut out of VAR towards Joe,
14 but it would show. Let's put it that way.

15 Q. Was it your arrangement with
16 Mr. Palmeroni that any profits that were
17 made through the sale of diverted N.V.E.
18 export product through the use of VAR would
19 still be split 50/50 between the two of
20 you?

21 A. Yes.

22 Q. And did Mr. Palmeroni object to
23 you dissolving AWD?

24 A. No, it was a very small
25 conversation. No, not at all. As far as

1 Rosarbo

2 he was concerned, he didn't have no bearing
3 on it whatsoever. It didn't bother him at
4 all.

5 Q. Did you ever hear of a company
6 called National Retail Consulting Group?

7 A. Yes.

8 Q. And known as NRCG?

9 A. Yes.

10 Q. What is NRCG?

11 A. I believe that's Joe's company,
12 Mr. Palmeroni's company.

13 Q. What led you to believe that?

14 A. I believe I got checks from that
15 company that were cut to me.

16 Q. To you?

17 A. Yes. Actually either to -- it
18 might have been to VAR.

19 Q. And did you --

20 A. But not to me personally.

21 Q. OK. And why would NRCG cut
22 checks to you through VAR?

23 A. That was through whatever else
24 that he was doing with other people, as far
25 as the -- well, what do you want to call

1 Rosarbo

2 it, brokerage stuff.

3 Q. The commission split?

4 A. Yes.

5 Q. So explain to me why
6 Mr. Palmeroni, through NRCG, would give you
7 money from the commission split scheme?

8 A. As we started moving forward and
9 we were cutting stuff from American
10 Wholesale and Smart World, through -- and I
11 started learning or he started showing me
12 what he was doing with the brokerage, he
13 more or less cut me checks to make me be
14 involved with that kind of play.

15 Q. And how many times --

16 MR. O'CONNOR: Can you read that
17 back.

18 (Record read)

19 A. I don't know how many.

20 Q. Was it more than --

21 A. Two, three.

22 Q. And approximately -- if you can
23 remember, approximately how much money did
24 you get from NRCG?

25 A. It's a guess. I think \$20,000.

1 Rosarbo

2 Q. What did you have to do for that
3 money?

4 A. Nothing.

5 Q. Did Mr. Palmeroni tell you that
6 NRCG was his company?

7 A. Yes.

8 Q. When you split the profits from
9 either AWD or VAR, did you write checks to
10 Mr. Palmeroni individually or NRCG?

11 A. NRCG.

12 Q. Why did you do that?

13 A. That's where he wanted me to
14 endorse it to. And I always made sure I
15 wrote corporate split on it, on the check.

16 Q. And by that, you meant that was
17 the split of the profits?

18 A. Yes.

19 Q. What is Global Marketing and
20 Sales if you know?

21 A. I don't know.

22 Q. When you would be involved in
23 sales for the first time with a new
24 customer, whether it was CB or
25 International Wholesale or ISG or Brand New

1 Rosarbo

2 Energy, did Mr. Palmeroni ever tell you
3 that you are going to get a call from
4 Carlos or from Darren or whoever?

5 A. Yes.

6 Q. What would he tell you?

7 A. That he got in touch with
8 so-and-so, whoever it may be. And they
9 seem like they would be interested, so
10 expect to get a call if they wanted to buy
11 some product.

12 Q. Did he ever tell you whether he
13 had given, whether Sumicek or Housholder or
14 whoever, that he had given them your cell
15 number?

16 A. No, but that was how they were
17 going to get in touch with me. He didn't
18 say it directly to me, but that was the
19 only way they were going to get in touch
20 with me was through my cell number.

21 Q. Prior to being contacted to sell
22 them the diverted export product, had you
23 ever given your cell phone number to Darren
24 Housholder?

25 A. No.

Rosarbo

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Q. Did you ever make up business
cards for AWD?

A. No.

Q. Do you know if Mr. Palmeroni had
a business card for AWD?

A. I don't believe so, but I don't
think so, no.

Q. Did you ever make up business
cards for yourself for VAR?

A. No.

Q. For AWD, where did you work out
of?

A. Where did I work out of?

Q. Yeah, did you have a physical
office?

A. No.

Q. So it was all --

A. It was all either in N.V.E.,
through my cell phone, or at my house.

Q. Did AWD buy -- sell anything but
N.V.E. products?

A. No.

Q. Did Smart World Inc. purchase
anything but N.V.E. products?

1 Rosarbo

2 Q. Sometimes check and sometimes
3 wire transfer?

4 A. I don't -- I don't recall any
5 wire transfer going into AWD. I think it
6 was mostly by check.

7 Q. I am going to show you Exhibit
8 number 3.

9 (Exhibit 3, Small Business
10 Platinum Statement for American
11 Wholesale Distribution, Bates stamped
12 BOA-AWD-0088 marked for identification,
13 as of this date.)

14 Q What we marked as Exhibit Rosarbo
15 3 is entitled at the top, "Small Business
16 Platinum Statement for American Wholesale
17 Distribution," and it's got a Bates stamp
18 number on the bottom, which reads BOA-
19 AWD-0088. OK? Do you have that in front
20 of you, Mr. Rosarbo?

21 A. Yes.

22 Q. Do you recognize this as a bank
23 statement from AWD?

24 A. Yes, I do.

25 Q. And these are statements that you

1 Rosarbo

2 were getting on behalf of AWD?

3 A. Yes.

4 Q. And you'll see this is for the
5 period from October 1 of 2004 through
6 October 29th of 2004, is that correct?

7 A. Correct.

8 Q. So if we go down, there is
9 something that says "account activity." Do
10 you see that?

11 A. Yes.

12 Q. For 10/1, it has a fund transfer
13 credit of October 1st of '04 from
14 International Sales Group. Do you see
15 that?

16 A. Yes.

17 Q. That's in the amount of
18 \$29,251.52?

19 A. Correct.

20 Q. What was that?

21 A. Obviously, that had to be a wire
22 transfer then because it is not a check,
23 the check numbers are over here. So that
24 was a wire transfer.

25 Q. So a payment from ISG to AWD?

1 Rosarbo

2 A. Yes.

3 Q. You said you made a couple of
4 sales to ISG, correct?

5 A. Yes, I don't know how many, but
6 yes.

7 Q. This payment to ISG was for the
8 sale of diverted N.V.E. export products?

9 A. Yes.

10 Q. The next entry down, October 5th,
11 shows a fund transfer credit from CB
12 Distributors. Do you see that?

13 A. Yes.

14 Q. That's in the amount of \$53,280?

15 A. Correct.

16 Q. Below that, there is another
17 transfer from CB Distributors on October
18 22nd, in the amount of \$54,000. Do you see
19 that?

20 A. Yes.

21 Q. Are those payments by CB for the
22 sale of diverted N.V.E. export product?

23 A. Yes, they are.

24 Q. There is also a check for \$80,000
25 where you don't know who that's from right

1 Rosarbo

2 now, do you?

3 A. No, not offhand, no.

4 Q. All the money coming into AWD was
5 for the sale of diverted N.V.E. export
6 product?

7 A. Yes.

8 (Exhibit 4, a group of checks
9 Bates stamped Sarinelli-AWD-243, 245,
10 248, 250, BOA-Smart World-000012 and
11 BOA-Smart World-000014 marked for
12 identification, as of this date.)

13 Q. Mr. Rosarbo, I have now given you
14 what we have marked as Rosarbo 4, which is
15 a group exhibit of checks, Bates stamp
16 number on the bottom Sarinelli-AWD-243,
17 245, and I cannot read the number on the
18 third page because it is all black.

19 MR. VORT: 248.

20 MR. O'CONNOR: I can't read it.

21 MR. VORT: It is above the black.

22 MR. O'CONNOR: I see it, thank
23 you, Mr. Vort.

24 Q It's 248. 250, and then
25 BOA-Smart World-000012 and BOA Smart World

1 Rosarbo

2 000014. Do you see that?

3 A. Yes.

4 Q. First of all, Sarinelli, was that
5 the accountant for AWD?

6 A. Yes, he was, I believe, Joe's
7 personal accountant. But we also used him
8 early on with Smart World and American
9 Wholesale.

10 Q. Who chose them to be the
11 accountant for Smart World and American
12 Wholesale?

13 A. We both -- well, he knew --
14 that's who he went to and that's -- I
15 followed suit.

16 Q. So the first page here, page
17 0243, it has a check number 179. Do you
18 see that?

19 A. Yes.

20 Q. And it says American Wholesale
21 Distribution although it is missing the N.
22 Do you see that?

23 A. Yes.

24 Q. Was that the checking account you
25 had for AWD?

1 Rosarbo

2 A. Yes.

3 Q. And that was at Fleet Bank at the
4 time?

5 A. Yes.

6 Q. So a check here for \$80,000 from
7 AWD to Smart World on October 8 of 2004,
8 correct?

9 A. Yes.

10 Q. And actually, if we go back to
11 Exhibit 3, the page you just had before,
12 Exhibit 3, that matches up to that October
13 12th check paid, number 179, for \$80,000,
14 correct?

15 A. Yes.

16 Q. So this was a payment from AWD
17 into the -- that shows the payments, right?

18 A. It shows money going from AWD
19 into Smart World, yes.

20 Q. And why was money going from AWD
21 into Smart World?

22 A. Well, that's how I was explaining
23 to you, to put money into Smart World so
24 then Smart World can rebuy the product and
25 then use that money to pay N.V.E.

1 Rosarbo

2 Q. And then is that your signature
3 there?

4 A. Yes.

5 Q. And what does the memo line say?
6 What is that?

7 A. I forget what the C-O-N is, but
8 that's an distribution. I forget what the
9 C-O-N is.

10 Q. And what do you mean -- you have
11 that on a couple of checks.

12 A. Yes, I know.

13 Q. What does the distribution mean?

14 A. I think -- meaning that it's
15 money that's going into Smart World for
16 rebuys and distribution.

17 Q. Distribution of the N.V.E.
18 product?

19 A. N.V.E. products, yes.

20 Q. Is that true for all of the
21 checks in this group exhibit, 177 for
22 \$130,000, 178 for \$80,000; 170 -- OK, so
23 those are two Smart World checks?

24 A. That is correct, all the ones
25 that are endorsed to Smart World Inc., yes,

1 Rosarbo

2 they say the same thing.

3 Q. The third page, which is page
4 248, on the top there is a check from AWD
5 in the amount of 200,000 dollars dated
6 7/14/2004 to National Retail Consulting
7 Inc. You see that?

8 A. Yes.

9 Q. Is National Retail Consulting
10 Inc. the same as National Consulting Retail
11 Group?

12 A. Yes.

13 Q. It says, "Corp. split." Do you
14 see that?

15 A. Yes.

16 Q. I think you have used those words
17 before?

18 A. Correct, corporate split.

19 Q. What did you mean by that?

20 A. Meaning National Retail
21 Consulting Inc. got \$200,000 cut to them.
22 And I got \$200,000 to me.

23 Q. So let's go to the bottom of the
24 page, check 174, also dated July 14th of
25 2004. There is a check from AWD to Vincent

1 Rosarbo

2 J. Rosarbo for \$200,000?

3 A. Correct.

4 Q. That's your half of the profits?

5 A. Yes.

6 Q. About how often would you do this
7 corporate split?

8 A. Every three, four months? I
9 don't know. You got -- I mean, I can
10 get -- I can get paperwork from all that
11 time and it will show. It was started out,
12 you know, slowly and then it increased
13 because the profit -- I mean, the product
14 started selling faster.

15 Q. When you were running -- you and
16 Mr. Palmeroni were running AWD, VAR, Smart
17 World Inc. --

18 A. I want to just correct something.

19 Q. Sure.

20 A. I mean, you can say if you want,
21 but I made the choice of changing American
22 Wholesale into VAR. So Smart World and
23 American Wholesale were definitely run by
24 me and Joe. VAR, towards the end, that was
25 my choice I did that. Not that it makes

1 Rosarbo

2 any difference, I'm just correcting it.

3 Q. Thank you, let me try and
4 rephrase it.

5 While you were involved in the
6 diversion and resale of the N.V.E. export
7 products, what were the expenses of Smart
8 World, AWD, or VAR?

9 A. The only expenses were the buying
10 of the product and the storing of it at
11 Foremost International. That's it.

12 Now, I know what C-O-N-S is
13 because I wrote it out here. Consulting
14 and distribution. I just made it short on
15 the other ones. See the other one.

16 Q. What you are looking at is check
17 number 186.

18 A. Correct.

19 Q. On page BOA Smart World 000012,
20 right?

21 A. Correct, yes.

22 Q. And so --

23 A. It is just to have something put
24 on there, consulting and distribution.

25 Q. There was no real consulting

1 Rosarbo

2 going on?

3 A. No, exactly.

4 Q. Because you were all the same
5 people, it is just you and Joe, right?

6 A. Correct, yes.

7 Q. There is nobody else?

8 A. Other than the people buying the
9 product. But I didn't consult much with
10 them other than how much they want and how
11 much we are going to get for it.

12 Q. You had no secretaries, no
13 support staff?

14 A. No, no.

15 Q. No truck drivers, no nothing?

16 A. No, no.

17 Q. Was there any reason why you were
18 signing all the AWD checks, as opposed to
19 Mr. Palmeroni?

20 A. Because they were in my
21 possession. After they were ordered and
22 went to his place of residence, and then we
23 both went to the New Rochelle banks, they
24 were in my possession from there on.

25 Q. The monthly statements, where

1 Rosarbo

2 were they going?

3 A. They were -- does it say on
4 there? That's a good question. A post
5 office box, I believe. PMV 235.

6 Q. That's a post office box in New
7 Rochelle --

8 A. That's another expense.

9 Q. What is that like a UPS store or
10 something like that?

11 A. Yes, correct.

12 Q. So other than paying for a PO Box
13 at a UPS store and the warehouse at
14 Foremost, were there any other expenses?

15 A. No.

16 Q. When the bank initially sent the
17 checks to Palmeroni's house, how did you
18 get them?

19 A. When the bank sent the checks?

20 Q. You said the banks sent the
21 original checks, the original box of blank
22 checks. You said was sent to Palmeroni's
23 house, right?

24 A. Oh, by mail.

25 Q. How did you get them from

1 Rosarbo

2 Palmeroni's house?

3 A. Well, I was there three times a
4 week, so when they showed up there, they
5 were -- he had given them to me.

6 Q. Mr. Palmeroni gave them to you?

7 A. Yes.

8 Q. I am going to show you what's
9 been Bates stamped numbered Sarinelli-
10 AWD-0224, and it says, "American Wholesale
11 Distribution Inc. General Ledger." Do you
12 see that, Mr. Rosarbo?

13 A. Yes.

14 Q. Was this general ledger prepared
15 by your accountants, Mr. Sarinelli?

16 A. Yes, because his name is on the
17 bottom. Yes, yeah -- yes.

18 Q. Well, that was not put on there
19 by Mr. Sarinelli. So I'm going to ask
20 you --

21 A. Oh, OK.

22 Q. Just in terms of -- do you
23 recognize this as a general ledger for AWD
24 and did you produce it, did Mr. Palmeroni
25 produce it or did Mr. Sarinelli produce it?

1 Rosarbo

2 A. Mr. Sarinelli produced it.

3 Q. Or someone at his company?

4 A. Yes.

5 Q. Does this show for this period of
6 time from January 1st of 2004 to
7 12/31/2004, it shows disbursements and
8 purchases, is that correct?

9 A. Yes.

10 Q. Does this show that you made
11 \$2,750,000 in purchases from Smart World?

12 A. Just -- I'm sorry, go ahead.

13 Q. Does this show that AWD made
14 \$2,750,000 in purchases from Smart World in
15 2004?

16 A. I have a question.

17 Q. OK. Let's see what we can do.

18 A. I see the bank statements here, I
19 recognize those. I recognize these. I'm
20 not sure where this information got put,
21 how this information was acquired to be put
22 on here.

23 Q. Well, did you -- let's get there
24 then. Let's get there.

25 A. Yes.

1 Rosarbo

2 Q. So did you provide information to
3 your accountants regarding your company to
4 make tax returns or to prepare other
5 documents?

6 A. Yes.

7 Q. And you would provide them with
8 bank records?

9 A. Can I or did I?

10 Q. Did you. Did you provide your
11 accountants with bank records?

12 A. Yes, of course, yes.

13 Q. And --

14 A. So then that's -- OK, I'm sorry.
15 Go ahead.

16 Q. The problem, Mr. Rosarbo, is that
17 you are the one who is sworn to answer the
18 questions here. So I'm trying to get
19 there.

20 A. OK, sure.

21 Q. The information that you provided
22 to your accountants, was it accurate at the
23 time you gave it to them?

24 A. Yes.

25 Q. Did Mr. Palmeroni provide

1 Rosarbo

2 information to the accountants?

3 A. Yes.

4 Q. And so if they -- let me ask
5 you --

6 A. I understand now.

7 Q. Did you keep a separate general
8 ledger than the accountants?

9 A. No. I understand now. This is
10 information that we provided to the
11 accountants and they distributed it on to
12 this piece of paper.

13 Q. Is that right?

14 A. I agree with that, yes.

15 Q. So again, does this show that AWD
16 purchased \$2,750,000 worth of goods from
17 Smart World in 2004?

18 A. I'm trying to find that figure.

19 Q. Under purchases on the bottom
20 half of the page, Mr. Rosarbo.

21 A. Yes. OK, I see it, yes. I
22 remember now, it was off the ledger books.
23 I remember now, yes. OK.

24 Q. Does it also show disbursements
25 of \$3,784,254?

1 Rosarbo

2 A. Yes.

3 Q. And does it show receipts to AWD
4 as of October 31st, 2004, of \$3,885,098?

5 A. That is correct.

6 Q. If you go down that column,
7 Mr. Rosarbo, it shows that the cash
8 receipts, C/R, and cash deposits for
9 November, December were \$234,596, is that
10 correct?

11 A. Yes.

12 Q. And then you get to a total of
13 \$4,119,694, is that right?

14 A. Yes.

15 Q. So is that true that your profit
16 for the year was the difference between the
17 4,119,000 and the 2,750,000 dollars?

18 A. That's correct.

19 Q. Thank you.

20 (Exhibit 6, of facsimiles of
21 checks from VAR Consulting, Bates
22 stamped BOA-Smart World-000038, 40,
23 VOA-VAR-0140 and BOA-Smart World-000008
24 marked for identification, as of this
25 date.)

Rosarbo

Q Mr. Rosarbo, what I am going to show you now is a few checks. We are not going to show you every check from VAR Consulting. What we try to do is pick out a couple.

A. That pertain to this?

Q. Just illustrative rather than having you go through a 2-inch stack of checks, which I don't think there is any dispute on. Rosarbo number 6 are a series of facsimiles of checks from VAR Consulting and they are Bates stamped numbered BOA-Smart World-000038, 40, and then VOA-VAR-0140 and BOA-Smart World-000008.

A. Yes, that's correct, yes.

Q. And so as we said, V-A-R Consulting or VAR Consulting was your company, correct?

A. Yes.

Q. And that the address on the check here, 23 Thistle Meadow Lane in Branford, Connecticut. That's your home address, correct?

A. Correct.

1 Rosarbo

2 Q. And you have the same memo, I
3 guess, consulting and distribution
4 abbreviations on this check, correct?

5 A. Correct, yes.

6 Q. First check we are looking at is
7 number 1587 from April 7th of 2006 in the
8 amount of 10,500 dollars to Smart World
9 Inc. Do you see that?

10 A. Yes.

11 Q. And was this for the payment of
12 N.V.E. products?

13 A. Yes.

14 Q. So what would happen, basically
15 you're writing a check to yourself?

16 A. On this?

17 Q. Well, you -- that's your
18 signature, right?

19 A. Yes.

20 Q. So --

21 A. But it is endorsed to --

22 Q. I want to go through the process.
23 And I'm not trying to say you're doing
24 something funny here. I just want to get
25 through the process.

1 Rosarbo

2 A. That's fine.

3 Q. So you wrote a check to Smart
4 World Inc., correct?

5 A. Yes.

6 Q. And as you say, it says, "For
7 deposit only." But -- you and
8 Mr. Palmeroni had control of the Smart
9 World Inc. account, correct?

10 A. Yes.

11 Q. Would it be you or Mr. Palmeroni
12 or someone else who would actually deposit
13 the check into the Smart World account?

14 A. No, it would be me.

15 Q. So you would write a check to
16 Smart World and then you would deposit it
17 into the Smart World account, correct?

18 A. Yes.

19 Q. And then the purpose of that was
20 so then you could write a check out of the
21 Smart World account to buy product from
22 N.V.E.?

23 A. Correct.

24 Q. If not a check, sometimes it
25 would be a wire transfer, correct?

1 Rosarbo

2 A. Correct.

3 Q. And take a look at the other
4 checks in this exhibit.

5 A. Yes, those are all for the same
6 purpose.

7 Q. So if there are checks coming out
8 of V-A-R or VAR Consulting to Smart World,
9 that was always to pay for the purchase of
10 N.V.E. product, correct?

11 A. Correct.

12 Q. That was because at some point,
13 you told your customers that you and Joe
14 Palmeroni had -- that instead of writing a
15 check or making a wire transfer to AWD,
16 they should start paying VAR Consulting?

17 A. That is correct, yes. Can I ask
18 a question?

19 Q. I don't know if I can answer it.

20 A. Is this the last check that you
21 got from there?

22 Q. It is the last one we are going
23 to show you today.

24 A. That's fine.

25 Q. I'm not sure about that. You

Rosarbo

1

2

A. Yes.

3

4

Q. That was from the profits of the
AWD, Smart World scheme?

5

A. Yes.

6

Q. Do you still own that today?

7

A. No.

8

Q. When did you sell that?

9

A. I don't know the exact date, but
it is definitely after here for sure.

11

Q. OK.

12

A. I'm going to say in 2007.

13

14

Q. 2007. And how much did you sell
it for?

15

16

A. The same amount, about 185,
something like that.

17

18

Q. And what happened to the proceeds
of that sale?

19

20

A. That went into my personal
account.

21

22

23

24

25

Q. Of all the product, N.V.E.
product that you and Mr. Palmeroni bought
through Smart World Inc., AWD and VAR, was
any of that product ever exported to
Europe?

1 Rosarbo

2 with Jeroen and Thomas, did you discuss the
3 scheme to sell export product, N.V.E.
4 export product in the United States?

5 A. This time?

6 Q. Yes.

7 A. No. That was already happening.
8 It was -- this is a pleasure trip to be
9 honest with you.

10 Q. Did you have any conversations
11 with Jeroen or Thomas Sikkink about them
12 trying to reimport N.V.E. goods back into
13 the United States?

14 A. No.

15 Q. Was there any conversation at any
16 time with the Smart World Netherlands folks
17 about reimporting goods from Europe into
18 the United States?

19 A. No.

20 Q. When -- I believe you testified
21 that part of the deal you had when you were
22 purchasing products through Smart World
23 Inc. is that the Smart World Netherlands
24 folks would help you place the orders, is
25 that right?

1 Rosarbo

2 A. Yes.

3 Q. So you would tell them what you
4 wanted to order and then they would place
5 an order, is that right?

6 A. Correct.

7 Q. And would Mr. Palmeroni have to
8 approve those orders?

9 A. No.

10 Q. Because they were already a
11 client of N.V.E.?

12 A. Correct.

13 Q. Now, I think you also said that
14 the folks at Smart World, this Thomas and
15 Jeroen, they were getting a piece of the
16 action?

17 A. Yes.

18 Q. Now, the money that you and
19 Mr. Palmeroni would pay to Thomas and
20 Jeroen, how were those payments made?

21 A. Through wire transfers.

22 Q. From where to where?

23 A. From American Wholesale into that
24 bank in Gibraltar.

25 Q. And was that an account that was

1 Rosarbo

2 set up in the name of T&J Limited?

3 A. Correct.

4 Q. T&J was Thomas and Jeroen?

5 A. Obviously, I mean -- I'm sorry,
6 yeah. I would say yeah. They never told me
7 that. I didn't ask.

8 Q. Is that what you understood it to
9 be?

10 A. Yes.

11 Q. You were not sending money
12 directly to Smart World Netherlands, you
13 were sending money to T&J Limited, is that
14 correct?

15 A. Yes.

16 Q. I'll show you some more
17 documents.

18 (Exhibit 9, Fleet Bank statement
19 dated November 1, 2003 through November
20 28, 2003 for Smart World Inc., Bates
21 stamped Sarinelli-Smart World-0273 and
22 0275 marked for identification, as of
23 this date.)

24 Q. So we are at Rosarbo 9. Do you
25 see that, Mr. Rosarbo?

1 Rosarbo

2 A. Yes.

3 Q. Number 9. So this is a bank
4 statement, from Fleet Bank, Small Business
5 Platinum Statement, November 1, 2003
6 through November 28, 2003 for Smart World
7 Inc., and it is Bates stamped number
8 Sarinelli-Smart World-273 and -- excuse me,
9 0273 and the second page is 0275. Do you
10 see that?

11 A. Yes.

12 Q. I know there has been a lot of
13 mergers in the banking world, but at the
14 time you were doing this back in 2003, was
15 the Smart World account with Fleet?

16 A. Yes.

17 Q. Or at least one of the accounts?

18 A. They were both.

19 Q. You had a Fleet and Bank of
20 America?

21 A. I think they both transferred
22 over into Bank of America.

23 Q. OK. The first entry for 11/3
24 shows you making a deposit in an ATM
25 machine in East Haven, Connecticut for

1 Rosarbo

2 \$180,000?

3 A. Yes.

4 Q. East Haven is near where your
5 home is?

6 A. Yes.

7 Q. Did you deposit a check into your
8 account there, is that what happened?

9 A. Yes.

10 Q. Next entry on November 3 of 2003
11 was a fund transfer or wire transfer from
12 Smart World to T&J Limited, is that
13 correct?

14 A. Yes.

15 Q. That's the amount \$50,880?

16 A. Yes.

17 Q. Why were you transferring over
18 \$50,000 to T&J?

19 A. That was their -- what they
20 earned, what was negotiated as to what they
21 were going to get at that time.

22 Q. All they were going to do for
23 what they earned, all they did was place an
24 order with N.V.E., is that correct?

25 A. And negotiated the pricing.

1 Rosarbo

2 Q. You said the pricing was
3 basically set for a significant period of
4 time, is that right?

5 A. Yes.

6 Q. So they didn't have to
7 renegotiate every time they made a sale,
8 did they?

9 A. No.

10 Q. As far as you know, they were
11 also making purchases for their own
12 account, is that correct?

13 A. Yes.

14 Q. So they were making some
15 purchases that were actually being exported
16 to Europe?

17 A. That's correct.

18 Q. And then they would arrange to
19 make their own payment for those, is that
20 right?

21 A. Yes.

22 Q. None of the payments that Smart
23 World Inc. made were for actual Smart World
24 Netherlands purchases, were they?

25 A. No.

1 Rosarbo

2 Q. All that Smart World Netherlands
3 did was place an order either by fax or
4 e-mail to N.V.E., is that correct?

5 A. Yes.

6 Q. They didn't have to put up any
7 money, did they?

8 A. No.

9 Q. They weren't on the hook for
10 anything, were they?

11 A. No.

12 Q. And was it clear to you,
13 Mr. Rosarbo, that Smart World Netherlands
14 was aware that none of this product was
15 ever going to be shipped to them?

16 A. Yes.

17 Q. There is a deposit on November
18 26th which looks like it was made in Lake
19 Hopatkong for \$140,000. Do you see that?

20 A. Yes.

21 Q. Is Lake Hopatong near to where
22 Mr. Palmeroni's residence was?

23 A. Yes. That was an actual bank
24 that -- actually Joe, Joe's wife worked at
25 that bank. Or wife now. Wasn't then. But

1 Rosarbo

2 she didn't know anything about this.

3 Q. What was her name?

4 A. I forget.

5 What's your wife's name, Joe?

6 Q. No, you can't do that.

7 A. I am sorry, I don't know.

8 Q. He is not allowed to tell you.

9 A. I am sorry.

10 Q. If I told you the name, would you
11 recall it?

12 A. Yes.

13 Q. Was it Michele?

14 A. Yes.

15 Q. Michele Hooey?

16 A. Yes.

17 Q. What was her job at the bank out
18 there?

19 A. She wasn't a teller because --
20 business agent? You know, she wasn't in
21 charge of the bank, maybe second in charge.

22 Q. Did she help set up any accounts
23 for you?

24 A. No, she just took the deposit.

25 And that was it. She didn't know what it

1 Rosarbo

2 was for as far as I knew because I didn't
3 talk to her about it.

4 Q. On the second page of this
5 document, there is another, on September
6 8th of 2003, there is another payment to
7 T&J Limited for 27,596 dollars. Do you see
8 that?

9 A. Yes.

10 Q. Again, that was a payment made as
11 part of the Smart World scheme?

12 A. Yes.

13 Q. If you go a little further down,
14 there appears to be a transfer on September
15 22nd for \$41,779.20 to Charmaine C. Felice.
16 Do you see that?

17 A. Yes.

18 Q. And second one right below that,
19 September 26th, also to Charmaine Felice in
20 the amount of \$94,000. Do you see that?

21 A. Yes.

22 Q. What were those payments for?

23 A. Charmaine Felice is a friend
24 of -- of Joe's, his wife, I forget his
25 name. They were friends and I got

1 Rosarbo

2 Q. When AWD would purchase products
3 from N.V.E., would it say on the bill of
4 lading that it was to go to Smart World
5 Netherlands in Holland?

6 A. Yes.

7 Q. And after the -- you arranged for
8 N.V.E. to call the warehouse, Foremost
9 warehouse and they would pick up the
10 product, why didn't the product get shipped
11 to Holland?

12 A. Well, the N.V.E. people -- their
13 only responsibility was picking up the
14 product and wrapping it. And then when
15 Foremost International would pick it up, as
16 far as N.V.E. knew, it was going to that
17 warehouse and then it was going to go
18 overseas.

19 There is no way of them knowing
20 that that really happened. And that's with
21 any product. Whoever was going to pick
22 that up, it would go to a shipping lane.
23 Whether it goes to a shipping lane that
24 goes overseas or goes to a warehouse,
25 N.V.E.'s responsibility after that is done.

1 Rosarbo

2 Because the product is paid, it's shipped
3 and that would be the end of it. They
4 wouldn't track that product.

5 Q. So N.V.E. is not responsible for
6 shipping it overseas?

7 A. No. Well, I can't say that.

8 Q. With regard to Smart World
9 Netherlands?

10 A. Correct, yes.

11 Q. With regard to Smart World
12 Netherlands?

13 A. Yes.

14 Q. So they are relying on the good
15 faith of its customer, when they say the
16 product is for export, it will actually be
17 exported?

18 A. That's correct.

19 Q. It is not your understanding that
20 Bob thought he was selling to Smart World
21 Netherlands so they could sell in the
22 United States, was it?

23 A. No.

24 Q. When the product gets to the
25 Foremost Warehouse in East Hanover, how did

1 Rosarbo

2 they know what do with it if it has a
3 shipping label that says it is supposed to
4 go to Holland?

5 A. It was the understanding that it
6 would be placed in an area and then I would
7 tell them what should go out and where.
8 And then sometimes actually CB, I think he
9 is the only one who did that, would order
10 it through his shipping costs and pick it
11 up.

12 Q. So he would send the truck to get
13 it?

14 A. That's why I know he knew it was
15 being diverted.

16 Q. Because he would send a truck to
17 Hanover, East Hanover rather than Sparta or
18 Andover?

19 A. Correct.

20 ~~MR. BASIL: Vincent, slow down.~~

21 ~~Q. You are doing OK. You have to~~
22 ~~wait.~~

23 ~~A. Go ahead.~~

24 Q. Did you, did you ever tell the
25 folks at Foremost, don't worry about this,

1 Rosarbo

2 none of this stuff is going to be exported?

3 A. No, because they really didn't
4 care. They -- they were getting paid for
5 storing product and for packing it. And so
6 on and so forth. So wherever it went, as
7 long as they got paid, they didn't care
8 where it went.

9 Q. They would wait for instructions
10 from you as to what to do with the product?

11 A. That's right. And I mean, the
12 reason why I know CB knew about it is
13 because, a couple of times some of the
14 shipping labels and invoice stuff got sent
15 to him by mistake. So he knew where it was
16 supposed to be going.

17 Q. Let me see if I understand. You
18 are saying some of the product that went
19 out to CB actually had the Holland or Smart
20 World Holland --

21 A. Correct, correct.

22 Q. -- let me finish.

23 Had the Smart World Netherlands
24 label on the pallets?

25 A. Yes.

1 Rosarbo

2 Q. And I assume how that's -- how --
3 I assume that is how this stuff came, it
4 came in pallet loads?

5 A. Yes.

6 Q. And how big was the pallet?

7 A. Pretty big, 7, 8 feet tall,
8 wrapped in plastic. Regular pallet. Not
9 anything long and -- a regular pallet, 7, 8
10 feet tall with product wrapped in plastic.

11 Q. Do you remember how many bottles
12 would be in a pallet?

13 A. No, no.

14 MR. BASIL: Five minutes?

15 MR. O'CONNOR: You want to take a
16 break, sure, sure. We can take a
17 break.

18 (Recess)

19 Q. Did you learn at some point,
20 Mr. Palmeroni had been fired from N.V.E.?

21 A. Yes.

22 Q. How did you learn that?

23 A. Through CB Distributors, Carlos.

24 Q. What did Carlos tell you?

25 A. That he got fired. Then I asked

1 Rosarbo

2 please, Mr. Vort.

3 MR. VORT: The problem is we
4 have, it's a race between the question
5 and answer.

6 MR. O'CONNOR: Just let me finish
7 the question.

8 MR. VORT: I had to stick it in.

9 Q. Did you have something else you
10 wanted to say, Mr. Rosarbo?

11 A. No. I didn't realize. When you
12 want a question answered and he objects, I
13 don't get to answer, is that why he is
14 saying that?

15 Q. Just wait for a second. We want
16 to make a record.

17 A. That's all it is for. I got you.

18 Q. Generally, we just need to make a
19 record and then we will tell you to go
20 forward. OK.

21 MR. BASIL: For the record, I
22 object to the form of the that last
23 question.

24 Q. Did Mr. Palmeroni tell you
25 anything else about why he was fired other

1 Rosarbo

2 than it had to do with him getting kick
3 backs of the commissions?

4 A. No.

5 Q. After -- let me set this up.

6 So at the time that Mr. Palmeroni
7 lost his job at N.V.E., you had already
8 been -- you had already lost your job at
9 N.V.E., is that right?

10 A. Yes.

11 Q. You continued to run the Smart
12 World scheme after you had left N.V.E., is
13 that correct?

14 A. That's correct.

15 ~~MR. VORT: Objection to form.~~

16 Q. And then after Mr. Palmeroni was
17 let go by N.V.E., did you continue to
18 divert N.V.E. export product through the
19 Smart World Inc. mechanism?

20 A. I'm not sure -- I'm not sure when
21 the last one was. I don't remember when
22 Joe got let go. And I don't remember when
23 the Smart World thing ended. So I can't
24 answer that truthfully.

25 Q. Did you and Mr. Palmeroni have

1 Rosarbo

2 any conversations about what are we going
3 to do now if Mr. Palmeroni was not inside
4 N.V.E. to continue to make money selling
5 the N.V.E. product?

6 A. No. It was understood that once
7 he was out, it ended.

8 Q. Do you recall whether you had any
9 attempts with the Smart World Netherlands
10 folks to see whether you could continue to
11 run this scheme to sell Smart World -- sell
12 N.V.E. products through Smart World Inc.?

13 A. No.

14 Q. You didn't have this conversation
15 or you just don't remember right now?

16 A. I don't remember. I mean -- with
17 the both of us, with Joe not there, we both
18 thought that it wasn't going to be able to
19 continue anyway. So that was just our
20 thought process.

21 Q. Now, prior to Mr. Palmeroni being
22 let go, were you aware that he was taking
23 commission money from the brokers?

24 A. Just, just from the Horowitzes.

25 Q. What did you understand to be

1 Rosarbo

2 going on with the Horowitzes?

3 A. That they were splitting up
4 brokerage money.

5 Q. With?

6 A. With Joe.

7 Q. And do you know why they were
8 doing that?

9 A. Well, so they can both earn and I
10 think it was off of a GNC account but don't
11 quote me on it.

12 Q. Who told you about the Horowitzes
13 giving some of their commission money to
14 Joe Palmeroni?

15 A. Joe did. That's how I ended up
16 getting some of it from his account into
17 mine. That's how that came about. Or his
18 company, National Retail Consulting,
19 remember you asked that before?

20 ~~Q. Um-hm.~~

21 ~~We are up to Rosarbo 10.~~

22 ~~(Exhibit 10, a one-page document~~
23 ~~Bates stamped Sarinelli NRCG 0196~~
24 ~~marked for identification, as of this~~
25 ~~date.)~~

1 Rosarbo

2 ~~are waiting for that. This will be Rosarbo~~

3 ~~11.~~

4 (Exhibit 11, statement for VAR
5 Consulting Bates stamped BOA-VAR-000232
6 marked for identification, as of this
7 date.)

8 Q. Can I look at that, make sure I
9 gave you the right one.

10 So what we have marked as Rosarbo
11 Exhibit 11 is a two-page document, bank
12 account statement for VAR Consulting, Bates
13 stamp number BOA-VAR-000232 and 240. Do
14 you see that?

15 A. Yes.

16 Q. Mr. Rosarbo, does this also show
17 that there were wire transfers going from
18 VAR Consulting to T&J Limited?

19 A. Yes.

20 Q. And again, that was their cut of
21 the Smart World Inc. purchases, is that
22 correct?

23 A. Correct.

24 Q. And above that, the very top, I
25 should give the date on this, this is the

1 Rosarbo

2 statement for July 1, 2006 through July 31,
3 2006.

4 A. OK.

5 Q. And there is a payment of
6 \$9,999.99 on July 17 to T&J, is that
7 correct?

8 A. Yes.

9 Q. Above that where it has deposits
10 and credits, there is a wire transfer on
11 July 12th that says Robert J. Canizzo in
12 the amount of \$26,880. Do you see that?

13 A. Yes.

14 Q. Was that for the purchase of
15 diverted N.V.E. product?

16 A. Yes.

17 Q. Canizzo was the guy you said was
18 connected with Quality King, is that right?

19 A. Correct.

20 Q. Can I see the second page of that
21 for a minute, please. I'm going to ask you
22 a question and then show you the document.

23 On the second page, 8/1 of 2006,
24 does this show a wire transfer in the
25 amount of \$8,288 from Brand New Energy to

1 Rosarbo

2 Smart World -- I mean to VAR?

3 A. Yes.

4 Q. Was that for the purchase of
5 N.V.E. product?

6 A. Yes.

7 Q. On the bottom of that page, there
8 was another payment out to T&J for
9 approximately \$9,500, is that correct?

10 A. Yes.

11 Q. Was there any other reason to
12 send money, for you and Mr. Palmeroni to
13 send money to T&J other than the use of
14 their name?

15 A. No.

16 Q. At some point, did you or Mr.
17 Palmeroni change accountants from the
18 Sarinelli firm?

19 A. Yes.

20 Q. Did you go with a firm, the
21 Carbone firm?

22 A. Correct.

23 Q. Why did you change accountants?

24 A. I don't -- I actually don't know
25 the reason why, but we did.

1 Rosarbo

2 Q. Whose decision was it?

3 A. We done it jointly.

4 Q. Who picked the Carbone firm?

5 A. Well, they were my accountant.

6 Q. They were your accountants?

7 A. Yes.

8 Q. So you had used them previously?

9 A. Correct.

10 Q. Did you discuss this with
11 Mr. Palmeroni before making that change?

12 A. Yes. Because before, I was
13 giving all the information to his
14 accountant and that's how we came up with
15 all the K-1s and stuff. So yes, we had to
16 discuss it.

17 Q. Well, the question is did you
18 discuss it?

19 A. Yes, we did. My guess is he
20 wasn't using him anymore.

21 Q. I don't want you to guess. I
22 just want what you remember.

23 A. OK, that's fine.

24 Q. I want to show you a group
25 exhibit. I'll hand them out to everybody.

1 Rosarbo

2 These are the Smart World tax returns for
3 2002, 2003, 2004, 2005, 2006, and 2007.

4 I'm going to hold off. Let me talk to
5 Eleanor.

6 (Pause.)

7 Q We are going to hold off on
8 introducing that.

9 The -- when you were invoicing
10 folks through AWD, some of those folks paid
11 you by wire or electronic fund transfer,
12 correct?

13 A. Correct.

14 Q. And some of the times you got
15 paid by check?

16 A. Yes.

17 Q. What was the address that you
18 used for checks to be mailed to?

19 A. The post office box address.

20 Q. Up in New Rochelle?

21 A. Correct.

22 Q. Now, I'm going to show -- I guess
23 we should mark this as 10A.

24 (Exhibit 10A, blown-up version of
25 Exhibit 10 marked for identification,

1 Rosarbo

2 as of this date.)

3 A. I can read it, but I'm -- this is
4 cut off on this end.

5 Q. That's OK. I'm only interested
6 in one check and I want to make sure you
7 can see that.

8 A. OK, that's fine.

9 Q. So this is 10A, and what 10A is,
10 is just a blow-up of a portion of Exhibit
11 10 which had a Bates stamp number of
12 Sarinelli-NRCG-0196.

13 What I would like you to do, now
14 that you can see we have made it larger,
15 take a look at check 1020 in the middle
16 there. Do you see that?

17 A. Yes.

18 Q. The one with your name on it?

19 A. Correct.

20 Q. Can you see it. Can you read
21 that?

22 A. Yes, I do.

23 Q. There is a check there from
24 National Retail Consulting Group dated
25 August 31st of 2001 for \$540. Do you see

1 Rosarbo

2 that?

3 A. Yes.

4 Q. And the question to you is why
5 was Mr. Palmeroni's company, National
6 Retail Consulting Group, writing you a
7 check for \$540?

8 A. It had to be for the commissions
9 for -- I guess -- I really don't know. But
10 for -- I don't know. I really don't know.

11 Q. That's fine. That's the answer.

12 But you did get a check from
13 Mr. Palmeroni's company?

14 A. Yes.

15 Q. I assume you cashed it?

16 A. Yes.

17 Q. So what we have here now as 12,
18 is a group exhibit which consists of the
19 Smart World Inc. tax returns for 2002,
20 2003, 2004, 2005, 2006, 2007, and 2007 --
21 this will be Rosarbo 12.

22 MR. PALMERONI: Do you know how
23 many pages it has?

24 MR. O'CONNOR: No, I have given
25 everyone a copy. So you can check out

1 Rosarbo

2 the Bates stamp numbers and page count
3 for yourself.

4 (Exhibit 12, tax returns for
5 Smart World Inc. for the years 2002,
6 2003, 2004, 2005, 2006, 2007 marked for
7 identification, as of this date.)

8 Q. Did you have a chance to look at
9 those?

10 A. Yes.

11 Q. Do you agree these are the tax
12 returns for Smart World Inc. that were
13 provided by your accountants?

14 A. Correct.

15 Q. Do these appear to be true and
16 accurate copies of the tax returns for
17 Smart World Inc. for those years?

18 A. Correct.

19 Q. Now, just taking a look at the
20 top one, 2002, it says that you had gross
21 receipts of \$3,252,985 for Smart World Inc.
22 in 2002, is that correct?

23 A. Correct.

24 Q. And cost of goods is 2,-- cost of
25 goods sold, \$2,836,169, is that right?

1 Rosarbo

2 A. Correct.

3 Q. So you would have gross profit of
4 \$416,816, is that right?

5 A. Correct.

6 Q. So did Smart World run at a
7 profit as well as AWD?

8 A. Run out of profit?

9 Q. Run on a profit?

10 A. Well, I would have to say no.
11 The only money that went into Smart World
12 came from American Wholesale. So if there
13 was excess, it just sat there until we used
14 it to buy other product.

15 Q. So sometimes you would put more
16 money into it?

17 A. Than was needed and then I would
18 wait until it got to the point that I
19 needed more, and then put more in. But
20 it -- it wasn't like it sold anything and
21 it wasn't a profit.

22 Q. Did you have distributions from
23 Smart World Inc. to you and Mr. Palmeroni?

24 A. No. Smart World Inc. was only
25 used for the simple fact of paying N.V.E.

1 Rosarbo

2 what was ordered through Smart World, that
3 was the only reason for that. And to
4 accept money from American Wholesale for
5 the purpose of continuing the circle.

6 Q. Go to the fifth page on the 2002
7 return, page 0091.

8 A. OK.

9 Q. Do you see it says for
10 shareholders identifying number and it has
11 a, what appears to be an social security
12 number there?

13 A. Yes.

14 Q. Is that your number?

15 A. No.

16 Q. Do you know if that's
17 Mr. Palmeroni's number?

18 A. Yes.

19 Q. And it has Mr. Palmeroni's name
20 and an address in Huntington Valley, PA.
21 Do you see that?

22 A. Yes, I do.

23 Q. Is that his home address?

24 A. Then at that time, it was.

25 Q. In 2002?

1 Rosarbo

2 A. Yes.

3 Q. Do you know why you used
4 Mr. Palmeroni's name and address, home
5 address on this K1 rather than yours?

6 A. No, I don't know why.

7 Q. Who would have provided this
8 information to the accountant, you or
9 Mr. Palmeroni?

10 A. Well, this information would have
11 been Mr. Palmeroni being that it's his
12 information. I don't -- I wouldn't have
13 known that.

14 Q. And this shows approximately half
15 of the gross profits going to
16 Mr. Palmeroni, is that your understanding?

17 A. Yes.

18 Q. Is says \$206,112?

19 A. That's correct.

20 Q. Going through the rest of these
21 tax returns for the remaining years, was
22 that the same way that you transacted
23 business; that any monies going into Smart
24 World were purely to be used for the
25 purchase of N.V.E. product?

1 Rosarbo

2 A. Yes.

3 Q. And if there are profits to be
4 made, they would be in AWD or VAR?

5 A. Correct.

6 Q. And then distributed to either
7 you individually or to Mr. Palmeroni
8 through NRCG?

9 A. Correct.

10 Q. Did you have any conversations
11 with Mr. Palmeroni as to why checks were
12 made to NRCG rather than to him personally?

13 A. No.

14 Q. Well, who decided to make the
15 checks out to NRCG?

16 A. Mr. Palmeroni.

17 Q. Did he instruct you to do that?

18 A. Yes, he did.

19 Q. Did he tell you the reason why he
20 wanted to do that?

21 A. No.

22 Q. I assume when you were running
23 Smart World Inc., the United States
24 company, that you had records of the orders
25 and the purchases, is that correct?

1 Rosarbo

2 A. Yes.

3 Q. So you would have orders to make
4 sure of how much product you were buying
5 and how much you were paying for it?

6 A. I kept records at the time of
7 orders that were being placed for the
8 simple fact that we didn't get confused as
9 to what you ordered and how much you were
10 supposed to pay. That's about it.

11 Q. So who was going to get what and
12 how much they owed you?

13 A. Right.

14 Q. Do you have those records
15 anymore?

16 A. No.

17 Q. What happened to -- let me back
18 up a little bit.

19 You also would have had some bank
20 records and some other records, is that
21 correct?

22 A. Correct.

23 Q. So what happened to Smart World
24 Inc.'s records?

25 A. I -- at the point of dissolving

1 Rosarbo

2 it, after a certain amount of years, I
3 threw them out.

4 Q. Let me just back up. Who had
5 possession of those records, Mr. Palmeroni
6 or yourself?

7 A. I did.

8 Q. When you say that after a certain
9 number of years, you threw them out, can
10 you tell us approximately when you threw
11 them out?

12 A. 2009.

13 Q. And that was after there had been
14 subpoenas to Smart World and AWD for bank
15 records, is that correct?

16 A. No, it was before that. I -- I
17 threw them out before I was involved in any
18 of this.

19 Q. You knew that Mr. Palmeroni was
20 involved in a lawsuit with N.V.E., is that
21 correct?

22 A. Correct.

23 Q. You understood that involved this
24 broker kickback scheme?

25 A. Correct.

1 Rosarbo

2 Q. You didn't think that any of it
3 involved your participation in the
4 diversion of export product?

5 A. No, I didn't.

6 Q. How did you throw them out?

7 A. I had shredded them and just got
8 rid of them, normal trash.

9 Q. What would you say the quantity
10 of the records is that you shredded?

11 A. Just all they were was bank
12 statements -- which, you know, normal bank
13 statements that come every month and
14 purchase orders which didn't have much on
15 them other than what was being bought.

16 Just out of a regular order book
17 that you get out of Staples, carbon copy
18 underneath, place the order, fax it to
19 whoever was buying it to insure that's what
20 they wanted. And then have the carbon
21 copy.

22 Q. Were you receiving faxes from
23 your customers?

24 A. No. They placed their orders by
25 phone. I faxed to them.

1 Rosarbo

2 Q. And what fax did you use to fax
3 stuff to them? What phone, what fax line?

4 A. The fax line, at the end, at my
5 home. And then the fax at N.V.E. when I
6 was working there.

7 Q. And you also, I think you said,
8 got some e-mails in terms of orders for
9 diverted product?

10 A. The e-mails were for them to put
11 the order in from me.

12 Q. For the folks in Holland?

13 A. Yes.

14 Q. What e-mail account were you
15 using to tell the folks in Holland what
16 orders to place?

17 A. That was an e-mail account that I
18 used to have with my personal e-mail.

19 Q. Can you tell us what it was,
20 please.

21 A. Well, it was, I know the one now,
22 VR4255@comcast.net. But, I didn't always
23 have Comcast.net.

24 MR. VORT: Excuse me, did you get
25 that e-mail address?

1 Rosarbo

2 (Record read)

3 Q. And that's a current e-mail
4 address?

5 A. Correct.

6 Q. Were you using a different e-mail
7 address -- let me finish, so we all know
8 what we were talking about.

9 Were you using a different e-mail
10 address back when you were taking orders
11 for AWD?

12 A. Yes and no, meaning that I
13 believe I used both of them.

14 Q. Do you remember what the second
15 one was?

16 A. No, but it was -- the numbers
17 were the same, VR4255, but I didn't have
18 Comcast then, I had DirecTV, so I'm not
19 sure what it would be.

20 Q. Did you have an AOL.com account?

21 A. That's what it is, yeah, at
22 AOL.com.

23 Q. So, VR4255@AOL.com?

24 A. Yes.

25 Q. Is that the account you used to

1 Rosarbo

2 communicate with Jeroen and Thomas in
3 Holland?

4 A. And also the one I just said to
5 you.

6 Q. Comcast?

7 A. Because when one was gone, I used
8 the other one.

9 Q. Do you still have the AOL.com
10 account?

11 A. No.

12 Q. When did you close or stop using
13 the AOL.com account?

14 A. When we went from DirectTV to
15 Comcast, which was quite a few years ago.

16 Q. When you were served with
17 document requests in this lawsuit, back
18 when you still had a lawyer, did you
19 attempt to find those e-mails?

20 A. Oh, yeah. But I didn't have AOL
21 anymore. But that had nothing to do with
22 this. It was changed by my wife --

23 Q. That's not really my question.

24 The question is did you look --

25 A. Yes, I did.

1 Rosarbo

2 Q. -- to get those e-mails?

3 A. Yes, I did.

4 Q. Were there still some e-mails on
5 your Comcast account relating to the Smart
6 World scheme?

7 A. I didn't see any, but there
8 possibly could be.

9 Q. Do you understand that you have
10 to look for those?

11 A. Yes, I couldn't find any no.

12 Q. Did you try to contact AOL.com to
13 see if there was still a record of your
14 e-mails there?

15 A. Yes, and they didn't have it.

16 Q. What did AOL tell you?

17 A. That it was too far back.

18 Q. So you made no effort to hold on
19 to any of those e-mails?

20 A. No. I didn't see the
21 significance of it to be honest with you.
22 Didn't even cross my mind.

23 Q. Same thing with regard to AWD,
24 did you have records relating to AWD?

25 A. Yes. AWD was actually the

1 Rosarbo

2 account that I -- that the orders were
3 placed in, so yes, of course.

4 Q. Let me back up. With regard to
5 the Smart World Inc., as I think we said
6 before, you were aware that Mr. Palmeroni
7 had been sued by N.V.E.?

8 A. I knew that he was let go and
9 then -- yes, I was aware that he got sued
10 by N.V.E. and then I also was aware that he
11 sued N.V.E.

12 Q. OK, so you knew that?

13 A. Yes.

14 Q. Did Mr. Palmeroni ever say to
15 you, with regard to the Smart World
16 records, Vinnie, hold on to those records?

17 A. No.

18 Q. Did he ever tell you, with regard
19 to the AWD records, Vinnie, you should hold
20 on to these AWD records because I'm in a
21 lawsuit?

22 A. No. The only thing that was said
23 to me, I asked, what's the lawsuit about,
24 and he told me kickback scam. I didn't ask
25 what you were suing Bob for because I

1 Rosarbo

2 didn't think it was none of my business.

3 Q. I'm just asking you whether
4 Mr. Palmeroni --

5 A. That's all right, that's fine.

6 Q. -- asked you to hold on to any
7 records?

8 A. No, no.

9 Q. Even in the companies that he was
10 part owner of?

11 A. No.

12 Q. And certainly with VAR
13 Consulting, did he ever ask you to hold on
14 to those records?

15 A. No, of course not, no.

16 MR. VORT: Vincent, slow down.
17 You are that far away.

18 MR. O'CONNOR: Are you going to
19 charge him for advice?

20 A. It's getting towards the end of
21 the day.

22 (Exhibit 13, Corporate Charter
23 for American Wholesale Distribution
24 Inc. dated July 9, 2001, Bates stamped
25 Sarinelli-AWD-0011, 0014, 0015, 0016,

1 Rosarbo

2 and 0021 marked for identification, as
3 of this date.)

4 Q. Rosarbo 13 is a group exhibit.
5 It says Secretary of State on top. It's a
6 corporate charter for American Wholesale
7 Distribution Inc. dated July 9, 2001,
8 starting with Sarinelli-AWD-0011 and then
9 0014, 0015, 0016, and 0021. Do you see
10 that, sir?

11 A. Yes, I do.

12 Q. Are these the formation documents
13 for American Wholesale Distribution?

14 A. Yes.

15 Q. When it came time to set up Smart
16 World Inc. did you and Mr. Palmeroni also
17 discuss whether you need to set up a second
18 company?

19 A. Yes.

20 Q. What did Mr. Palmeroni tell you
21 about why you had to set up two companies?

22 A. Well, for the simple fact that we
23 couldn't have money going out and money
24 coming into the same company. It would
25 have -- we wouldn't have been able to do

1 Rosarbo

2 what we did.

3 Q. Why couldn't your customers send
4 the check to Smart World Inc.?

5 A. That's a good question. I'm
6 really -- I don't know the answer to that.

7 Q. Were you trying to hide
8 something?

9 A. Well, to tell you the truth, I
10 really don't know. Why couldn't they.
11 That's a very good question.

12 Q. Who told you you couldn't do
13 that? Did Mr. Palmeroni tell you that?

14 A. He came up with the name of the
15 other company, but we didn't discuss why.
16 And I'm really not sure. I don't know why
17 that couldn't have been done -- with
18 maybe -- maybe it would have looked
19 obvious? I don't know.

20 ~~MR. VORT: Objection.~~

21 A I have no idea.

22 ~~MR. VORT: Speculative.~~

23 Q. You said Mr. Palmeroni came up
24 with the name of the other company. Do you
25 mean American Wholesale Distribution?

1 Rosarbo

2 A. Yes. And we both kicked names
3 back and forth. And then he came up with
4 that one and we settled on it.

5 Q. Was it your idea to set up two
6 companies?

7 A. No.

8 Q. If it wasn't your idea, whose
9 idea was it?

10 A. It was Mr. Palmeroni's.

11 Q. Did Mr. Palmeroni ever offer to
12 give you any ownership interest in NRCG?

13 A. No.

14 Q. How about Global Marketing and
15 Sales?

16 A. No.

17 Q. On the third page of this
18 document, which is 0015 --

19 A. Yes.

20 Q. This time, instead of just your
21 name, it has both Vincent Rosarbo and Jesus
22 Palmeroni. Do you see that?

23 A. Yes, I do.

24 Q. Are either of those addresses
25 yours?

1 Rosarbo

2 A. No.

3 Q. Do you know why it has --
4 whose -- whose address is 1 Madison Avenue,
5 Warminster, Pennsylvania?

6 A. That's either his sister's or his
7 mother's or vice versa, but I don't know
8 which.

9 Q. Why did you use somebody else's
10 address?

11 A. I don't have the answer to that.
12 My -- I'm going to say that it was
13 addresses, that he was collecting mail in
14 those addresses, that he lived there before
15 and was still using them as a mailing
16 address.

17 Q. So whose idea was it to use
18 either his mother's or sister's address,
19 your idea or Mr. Palmeroni's idea?

20 A. Mr. Palmeroni.

21 Q. Did you ever question him as to
22 why he was going to use his mother's or
23 sister's address, as opposed to you using
24 your own address?

25 A. No.

1 Rosarbo

2 (Exhibit 14, American Wholesale
3 Distribution tax returns 2001 through
4 2007 marked for identification, as of
5 this date.)

6 Q. So what's going to be Rosarbo 14
7 are the United States income tax returns
8 for American Wholesale Distribution for
9 2001, 2002, 2003, 2004, 2005, 2006, and
10 2007. Do you see that, Mr. Rosarbo?

11 A. Yes, I do.

12 Q. Were these documents prepared
13 with information either you or
14 Mr. Palmeroni gave to your accountants?

15 A. Yes.

16 Q. Mr. Rosarbo, looking at just
17 2001, the first set there, 1, 2, 3, 4, 5,
18 6, 7 pages in, Sarinelli-AWD-17. Do you
19 see that?

20 A. Yes.

21 Q. Again, does this confirm, as we
22 talked about before, that you and
23 Mr. Palmeroni each had 50 percent of the
24 shares in American Wholesale Distribution?

25 A. That is correct.

1 Rosarbo

2 Q. And that first year claiming
3 gross profit on the first page of only
4 \$11,471, is that right?

5 A. Yes.

6 Q. By 2003 though, you were claiming
7 gross profit of over \$800,000, is that
8 correct?

9 A. Yes.

10 Q. And was that money then split
11 between you and Mr. Palmeroni?

12 A. That's correct.

13 Q. If you go to the seventh page of
14 the 2003 returns, Mr. Rosarbo. This is
15 page Sarinelli-AWD-0144.

16 A. OK.

17 Q. Do you see on the right of this
18 schedule K1, it says, Alpha
19 Pharmaceuticals, with a Las Vegas address.

20 A. Yes.

21 Q. What is Alpha Pharmaceuticals?

22 MR. VORT: You are on page number
23 what?

24 MR. O'CONNOR: 144.

25 A. I don't know.

Page 235

1 Rosarbo

2 A. ~~I don't want to guess.~~

3 Q. Well, can you tell me your best
4 recollection?

5 A. I think it has something to do
6 with the Portzes.

7 Q. OK.

8 A. But that's a guess.

9 Q. Do you think this has to do with
10 the arrangement with the Portzes to sell
11 Black Ice?

12 A. Yes.

13 Q. As far as you're aware,
14 Mr. Rosarbo, is the information contained
15 in these tax returns accurate?

16 A. Yes.

17 Q. Moving to the next year,
18 Mr. Rosarbo, 2004, looking at the front
19 page of that document, Sarinelli-AWD-0211,
20 do you see where it says line 21?

21 A. Yes.

22 Q. First start with line 1, it shows
23 gross receipts of over 4 million dollars,
24 is that right?

25 MR. VORT: Are we talking

1 Rosarbo

2 about --

3 MR. O'CONNOR: 2004.

4 MR. VORT: 2009? I don't have a
5 2009.

6 MR. O'CONNOR: No, 211. 2004.

7 Q. It shows gross receipts of over
8 \$4,000,000, is that correct?

9 A. Yes.

10 Q. And shows cost of good sales as
11 \$2,750,000?

12 A. Yes.

13 Q. When you get down to line 21, it
14 shows ordinary business income of \$1,365 --
15 excuse me, \$1,365,030. Do you see that?

16 A. Yes.

17 Q. Is that your profit through AWD
18 for 2004?

19 A. Yes.

20 Q. That was split 50/50 between you
21 and Mr. Palmeroni?

22 A. Yes.

23 Q. All of the profit that you made
24 through AWD in 2004 was made through the
25 sale of diverted N.V.E. products, is that

1 Rosarbo

2 correct?

3 A. Yes.

4 Q. Is that true for each of the
5 years for AWD that we have here?

6 A. Yes.

7 Q. The next year in 2005, looking at
8 Carbone AWD-0000001, it shows on line 21
9 for ordinary income \$630,000?

10 A. That's correct.

11 Q. And then did you split that with
12 Mr. Palmeroni?

13 A. Yes.

14 Q. And by 2006, profits were going
15 down?

16 A. Yes.

17 Q. Down to \$9,800?

18 A. Yes.

19 Q. In 2007 return that has no
20 numbers on it.

21 A. Yeah, it was over by then.

22 MR. VORT: It was what?

23 THE WITNESS: It was done by
24 then. There was no activity.

25 MR. VORT: OK, thank you.

1 Rosarbo

2 Q. When you started using VAR
3 Consulting, did you use that VAR Consulting
4 checks to make payments to both yourself
5 and to Mr. Palmeroni?

6 A. Yes.

7 Q. And they were checks then to
8 Mr. Palmeroni and to NRCG?

9 A. Yes.

10 Q. Were most of the checks to NRCG
11 or to Mr. Palmeroni?

12 A. NRCG.

13 Q. I'm going to show you a couple of
14 checks though not all checks, some
15 representative checks.

16 A. OK, that's fine.

17 (Exhibit 15, facsimiles of checks
18 Bates stamped BOA VAR-0166 0229 and
19 0150 marked for identification, as of
20 this date.)

21 Q. Rosarbo 15 is a three-page
22 exhibit, facsimiles of checks, Bates stamp
23 numbers on the bottom of BOA-VAR-0166, 0229
24 and 0150. Do you see that Mr. Rosarbo?

25 A. Yes, I do.

1 Rosarbo

2 Q. Starting with the first page,
3 0166. There is a check to National Retail
4 Consulting Inc. for \$9,562. Do you see
5 that?

6 A. Yes.

7 Q. Is that your signature on that?

8 A. Yes.

9 Q. And when you wrote this check,
10 did you intend for the money to go to
11 Mr. Palmeroni?

12 A. Yes.

13 Q. The next page, 229, has a
14 \$1400 check to Jesus Palmeroni. Do you see
15 that?

16 A. Yes.

17 Q. I think, I don't know if this is
18 on the record, for this deposition, is
19 Jesus or Jesus, Joe Palmeroni's given name?

20 A. Yes.

21 Q. The \$1400 check on July 20th of
22 2003, what does it say on the "for" line?

23 A. I was looking at that. My bus
24 flight to -- and then I don't know those
25 three letters.

1 Rosarbo

2 Q. Was this reimbursement for an
3 expense or do you know what this was for?

4 A. No, I don't. Or business flight.
5 That's what this says. Business flight --

6 Q. Is that HOL?

7 A. Which would mean Holland.

8 Q. Is this 7/20/2003, is that about
9 the time of the flight to Holland that you
10 took?

11 A. Yes.

12 Q. So you folks, although you said
13 it was for pleasure, you said this was
14 treated as a business expense of the
15 company?

16 A. Correct.

17 Q. Next page, 150, a check from VAR
18 Consulting to Joe Palmeroni, \$45,000
19 dollars dated February 15, 2006, is that
20 correct?

21 A. Yes.

22 Q. It says consulting fees. Why
23 does it say consulting fees?

24 A. Why does it say it?

25 Q. Yeah.

1 Rosarbo

2 A. I didn't know what else to put
3 down. I don't know. That's what I put
4 down with all the checks. This one here, I
5 didn't put corporate split for some reason.

6 Q. Was this treated differently than
7 the corporate split?

8 A. No, it was used for the same
9 purposes. I just, for some reason, I
10 didn't put corporate split on there.

11 Q. Did you -- Mr. Palmeroni ask you
12 to treat this one differently because it
13 was made --

14 A. No.

15 Q. Let me finish.

16 Did Mr. Palmeroni ask you to
17 treat this one different because it was
18 made out to him personally as opposed to
19 NRCG?

20 A. No.

21 (Exhibit 16, VAR Consulting
22 income tax returns 2002 through 2009
23 marked for identification, as of this
24 date.)

25 Q. So what we are marking as Rosarbo

1 Rosarbo

16, Mr. Rosarbo, are tax returns for V-A-R Consulting or VAR Consulting for 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009. Do you see that?

6 A. OK.

7 Q. Did you have a chance to look at
8 those?

9 A. Yeah.

10 Q. So VAR Consulting, you,
11 Mr. Rosarbo, owned 100 percent of VAR
12 Consulting?

13 A. Yes.

14 Q. You listed your daughter Nicole
15 and wife Angelina as officers, is that
16 correct?

17 A. Yes.

18 Q. Why did you list Nicole as an
19 officer?

20 A. I was told I needed three or more
21 people to get certain medical benefits for
22 the company. So that's what I did. And
23 she had done relatively small stuff for me.
24 But it was basically for that. And I'd
25 have three more people on the corporation

1 Rosarbo

2 to get medical benefits that could have
3 been affordable for the three of us.

4 Q. Was that the reason you did it
5 through VAR Consulting rather than through
6 AWD?

7 A. Yeah, AWD and Smart World were
8 set up totally for those purposes. This
9 was set up differently.

10 Q. So you made Nicole secretary and
11 treasurer to do some odd jobs and to get
12 her benefits?

13 A. Yes, she was in college, to get
14 medical benefits for the three of us that
15 could have been affordable and that was
16 basically it.

17 Q. Did you purchase health insurance
18 through VAR for yourself, your wife and
19 your daughter?

20 A. Yes. Not through VAR though --
21 oh, yes, yes, we did. I forget how much it
22 cost, but yes.

23 Q. How did you manage to split the
24 profits when you were using VAR -- how did
25 you manage to split the profits with

1 Rosarbo

2 Mr. Palmeroni?

3 A. Well, there was the one check
4 that you seen, that was the only check that
5 was cut out.

6 Q. It was a couple of checks, right?

7 A. Or whichever ones that are there.

8 Q. Is that why you were calling it
9 consulting, because Mr. Palmeroni didn't
10 own any part of VAR?

11 A. Correct.

12 Q. Were the profits generated in
13 VAR, were they as a result of the sale of
14 diverted N.V.E. export goods?

15 A. Yes.

16 Q. Did your wife's business with the
17 trinkets, did that generate any profit?

18 A. Very, very small. I'm not even
19 sure if it was in here. It was a, you
20 know, trade shows that we did that were in
21 a park, product that would have been --
22 little bit of product was bought and little
23 bit was sold, but it didn't amount to
24 hardly anything.

25 Q. When you say didn't amount to

1 Rosarbo

2 hardly anything, can you give me ballpark?

3 A. \$1500, 1200.

4 Q. Ballpark number?

5 A. 1500, yeah, on the weekend.

6 Q. How about on a yearly basis?

7 A. It was only that one time.

8 Q. One time?

9 A. Yes.

10 Q. So of all the income that you
11 made on your wife's trinket business was
12 \$1500 total?

13 A. Correct.

14 Q. Anything else is related to the
15 sale of the N.V.E. diverted goods?

16 A. Correct.

17 MR. VORT: Before -- are you
18 finished with these?

19 MR. O'CONNOR: Yeah.

20 Q You don't dispute the accuracy of
21 these documents I just showed you?

22 A. No, I don't.

23 (Exhibit 17, a facsimile of check
24 number 1064 dated April 20th, 2005,
25 from Curtis Beverage LLC to VAR Bates

1 Rosarbo

2 stamped BOA-VAR-0123 marked for
3 identification, as of this date.)

4 Q. If I didn't ask you before,
5 Mr. Rosarbo, I assume, along with the Smart
6 World and the AWD records, did you also get
7 rid of your VAR Consulting records?

8 A. Yes.

9 Q. About when did you get rid of the
10 VAR Consulting records?

11 A. About the same time, 2008, 2007,
12 2008.

13 Q. I think before you said it might
14 have been around 2009?

15 A. OK. Yes.

16 Q. I'm showing you Rosarbo 17, which
17 is a facsimile of a check number 1064 dated
18 April 20th, 2005, from Curtis Beverage LLC
19 to VAR in the amount of \$19,124, Bates
20 stamp number BOA-VAR-0123. Do you see that
21 Mr. Rosarbo?

22 A. Yes, I do.

23 Q. And did VAR or you receive this
24 check from Curtis Beverage?

25 A. Yes.

1 Rosarbo

2 compensated more highly?

3 A. Yes.

4 Q. When you initially set up the
5 Smart World Inc. here in the United States,
6 how did you and Mr. Palmeroni set up enough
7 money to start buying product?

8 A. We both put money into the
9 company. I don't know exactly how much it
10 was. But that's how we started it.

11 Q. Do you remember it being
12 approximately \$10 to 15,000 each?

13 A. Correct.

14 Q. Is that correct?

15 A. No, it's -- the first banking
16 statement would show it. But yes,
17 because -- don't correct me on the number,
18 but something to that effect to start out
19 because we didn't know where it was going
20 to go and what it was going to do.

21 Q. Is that in the neighborhood of
22 what you put in?

23 A. Yes.

24 Q. 10 to 15, somewhere in that
25 neighborhood?

1 Rosarbo

2 A. Correct. Might have been a
3 little bit more, 20, but together.

4 MR. O'CONNOR: I'm done,
5 Mr. Rosarbo. Thank you for your time.

6 THE WITNESS: All right.

7 MR. O'CONNOR: Mr. Rosarbo, you
8 understand and we talked about this
9 earlier that Mr. Vort and Mr. Basil
10 will also have the right to ask you
11 questions.

12 It is now 4:30 and it's late in
13 the day. I don't know how much
14 Mr. Vort or Mr. Basil will have, but I
15 suspect it is more than half an hour?

16 MR. VORT: You are correct. I
17 have telephoned my office to get dates
18 for the week between January 4th and
19 January 8th. I know Ms. Lipsky is
20 going to be away before then.

21 MR. O'CONNOR: I was hoping we
22 would do it sooner.

23 MR. VORT: January 5th, I have a
24 hearing I can't get out of, but the
25 rest of that week is available.

1 UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
2 CIVIL ACTION NO. 2:06-CV-05455 (HAA) (ES)
3 N.V.E., Inc.,
4 Plaintiff,

DEPOSITION OF:

5 v.

VINCENT J. ROSARBO

6 JESUS J. PALMERONI a/k/a JOSEPH
PALMERONI, RONALD SUMICEK, SUNBELT
7 MARKETING, ABC CORPORATIONS 1-10,
and JOHN DOES 1-10,

8 Defendants.

9 - - - - -

10 JESUS J. PALMERONI,
11 Third-Party Plaintiff,

12 v.

13 ROBERT OCCHIFINTO and WALTER ORCUTT,
14 Third-Party Defendants.

15 - - - - -

16 TRANSCRIPT of the stenographic notes of
17 the proceedings in the above-entitled matter, as
18 taken by and before JANE A. GARBUS, a Certified
19 Court Reporter, License No. XI01648, of the State of
20 New Jersey, held at the office of ROBERT A. VORT,
21 ESQ., Two University Plaza, Hackensack, New Jersey,
22 on Wednesday, March 16, 2016, commencing at
23 11:10 a.m.

24
25 Job No. NJ2264744

1 A. Tammy Thom, I believe her last name is.
2 There was another girl who was there. We
3 went to her wedding. I don't remember her name.
4 Jennifer?

5 Q. Okay. Would that have been Jennifer
6 Hunsicker?

7 A. Correct. For a time Michelle.

8 Q. Referring to Michelle Hooey?

9 A. Yes. That's all I remember.

10 Q. Now, did Mr. Palmeroni travel a lot?

11 A. Yes.

12 Q. When Mr. Palmeroni was traveling, who was
13 in charge of the sales department?

14 A. Well, that was kind of open. I mean, I
15 guess I was the number two guy, but we more or less
16 weren't under much supervision other than when
17 Walter came.

18 Q. Referring to --

19 A. In the beginning --

20 Q. Walter who?

21 A. Walter Orcutt.

22 In the beginning, it was kind of open.
23 Then when Walter came, he more or less took that
24 position.

25 ~~Q. He became number two person in the sales~~

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 2:06-CV-05455 (HAA) (ES)

N.V.E., Inc.,

Plaintiff,

CONTINUED

DEPOSITION OF:

v.

VINCENT J. ROSARBO

JESUS J. PALMERONI a/k/a JOSEPH VOLUME II

PALMERONI, RONALD SUMICEK, SUNBELT

MARKETING, ABC CORPORATIONS 1-10,

and JOHN DOES 1-10,

Defendants.

JESUS J. PALMERONI,

Third-Party Plaintiff,

v.

ROBERT OCCHIFINTO and WALTER ORCUTT,

Third-Party Defendants.

TRANSCRIPT of the stenographic notes of
the proceedings in the above-entitled matter, as
taken by and before JANE A. GARBUS, a Certified
Court Reporter, License No. XI01648, of the State of
New Jersey, held at the office of ROBERT A. VORT,
ESQ., Two University Plaza, Hackensack, New Jersey,
on Wednesday, March 23, 2016, commencing at
11:10 a.m.

Job No. NJ2264746

1 Q. -- like a Playboy-type photo?

2 A. Yes.

3 Q. Mr. Vort also asked you about Mr.
4 Occhifinto's criminal record. Were you aware that
5 Mr. Palmeroni also was a convicted felon?

6 A. Yes.

7 Q. And did you think Mr. Occhifinto was
8 trying to give you a second chance as a convicted
9 felon by giving you a job?

10 A. I guess so, yes.

11 Q. Do you think he was trying to give
12 Mr. Palmeroni a second chance as a convicted felon?

13 A. Yes.

14 Q. Because when you went to work, when you
15 went to work for N.V.E., you didn't have much sales
16 experience, did you?

17 A. No.

18 Q. And you had not worked in the nutritional
19 supplement industry, had you?

20 A. No.

21 Q. I believe you did some construction-type
22 work?

23 A. A power plant operator.

24 Q. And that was your Navy experience and then
25 afterwards at Sikorsky. Correct?

1 A. That's correct, yes.

2 Q. Your construction work with your brother
3 or brother-in-law?

4 A. Brother-in-law.

5 Q. Ultimately, you were not making what you
6 thought to be enough money doing that work. Is that
7 correct?

8 A. Correct, yes.

9 Q. And when you were hired by Mr. Occhifinto
10 at N.V.E., you were making significantly more money
11 than you had been making working construction with
12 your brother-in-law. Is that correct?

13 A. It grew into that, yes.

14 Q. And the money you made while working at
15 N.V.E. was more money on a yearly basis than you've
16 made since leaving N.V.E. and shutting down AWD and
17 VAR. Is that correct?

18 A. Yes.

19 Q. Have you had any sales jobs employment
20 since leaving N.V.E. other than with AWD and VAR?

21 A. No.

22 Q. While employed at N.V.E., I think you
23 testified that you would receive a bonus towards the
24 end of the year. Is that correct?

25 A. Yes.